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T H E
Practising Attorney:

O R,

New King's Bench Guide.

B E I N G

A Compendious Introduction to the Knowledge of the Practice of that Court, divided into Chapters, treating of, and fully explaining the Nature and Reason of the several Proceedings progressively from the first Commencement of a Suit to the final Determination thereof, in a Way entirely new.

A L S O,

The Proceedings on Writs of Error into affirmance and reversal of Judgment,

W I T H

Variety of useful Precedents, never before published.

L O N D O N:

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The following is a list of the names of the persons who have been appointed to the various positions in the various departments of the Government of the State of New York, for the year 1900.

Verity of official Proceedings, never before published.

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10. D. O. N. I.

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C O N T E N T S.

CHAP.	PAGE
I. O F the Origin and Antiquity of the Court of King's Bench	1
II. Of the Original Writ	5
III. Of the Process issued to compel Obedience to the Original Writ	8
IV. Of the Capias	11
V. Of Actions by Bill, and of the Bill and Process thereon	19
VI. Of the Latitat, and suing the same forth	24
VII. Of Bail to the Sheriff	26
VIII. Of the Defendant's Appearance by Original	28
IX. Of filing Common Bail to a Suit by Bill	31
X. Of putting in Special Bail, or Bail above, by Original	33
XI. Of putting in Special Bail, or Bail above, by Bill	34
XII. Excepting to Bail	36
XIII.	—

C O N T E N T S.

CHAP.	PAGE
XIII. Of justifying or perfecting Bail, and of adding fresh Bail and justifying	38
A Table of the several Times within which Bail shall be put in and justified	42
XIV. How to proceed upon the Bail Bond	44
XV. How to proceed against the Sheriff to compel a Justification, or for an Attachment	45
XVI. Of the Declaration — —	47
XVII. Of the Antient Practice in respect of Declarations by Original — —	57
XVIII. Of the Antient Practice by Bill — —	59
XIX. Of the present Practice in respect to Declarations — —	60
A Table, shewing the several Times within which a Defendant must plead to the Declaration delivered, or filed against him — —	64
Precedents of Declarations — —	67
XXVI. Of amending the Declaration — —	86
XXVII. Of changing the Venue — —	87
XXVIII. Imparlance — —	88
XXIX. Oyer — —	89
XXX. Of Pleading in general — —	90
XXXI. Of the Rule to plead, and demanding Plea	103
XXXII. Of delivering and entering the general Issue — —	104
XXXIII. Of filing special Pleas, and making up the Paper-Book — —	108
Precedents of Special Pleas — —	112
Set off — —	118
XXXIV. Of paying Money into Court	121
XXXV. How to proceed to compel the Parties to join Issue, and in Demurrer	123
XXXVI. Demurrer — —	124
	XXXVII.

C O N T E N T S.

CHAP.	PAGE
Precedents of Demurrers	128
XXXVII. Of the Issue	130
XXXVIII. Notice of Trial and Countermand	134
XXXIX. Of making up the Record, and entering the Issue	136
XL. Venire Distringas and Mittimus	139
XLI. Of Process to compel the Attendance of Witnesses, and of examining Witnesses on Interrogatories	144
XLII. Of entering the Cause for Trial, and of the same being made a Remanet	148
XLIII. Of the Brief, Trial, &c.	150
XLIV. Of the Postea, and marking the Deliberatur thereon	153
XLV. Of Judgment by Default	160
XLVI. Writ of Inquiry and Notice of executing the same	162
XLVII. Rule for Judgment, stamping Postea and Inquisition, taxing Costs, and signing final Judgment	165
XLVIII. Of entering final Judgment on the Roll, Docqueting, and carrying in the Roll	169
XLIX. Execution	182
L. Of entering Satisfaction of Record	191
LI. Of Proceeding against Bail	192
LII. How to enter the Recognizance on the Roll, and when to be entered	194
LIII. Scire Facias	195
LIV. Of bringing Actions against Bail on the Recognizance	220
LV. Of rendering the Defendant in Discharge of Bail, and on Habeas Corpus	221

LVI.

C O N T E N T S.

CHAP.	PAGE
LVI. Of Charging Defendant in Execution	224
LVII. Non Profs — —	224
LVIII. Trial by Proviso — —	228
LIX. Of Judgment, as in the Case of a Non-suit	229
LX. Special Jury — —	233
LXI. Of granting a View — —	234
LXII. Habeas Corpus — —	237
LXIII. Of giving Rules for Bail on Habeas Corpus, and putting in and perfecting Bail thereon — —	248
LXIV. Procedendo — —	251
LXV. Certiorari — —	252
LXVI. Proceedings against Prisoners — —	253
LXVII. Proceedings by and against Attornies	268
LXVIII. Ejectment — —	273
LXIX. Of Writs of Error — —	295
LXX. How to sue forth and prosecute a Writ of Error from an inferior Court	297
LXXI. How to prosecute a Writ of Error from the <i>Common Pleas</i> to the <i>King's Bench</i>	307
LXXII. Error in the Exchequer Chamber	311
LXXIII. Error <i>tam in redditione judicii quam in adjudicatione Executionis</i> — —	312
LXXIV. Error <i>de recordo quod Coram vobis Residet</i>	312
LXXV. Error from Ireland — —	313
LXXVI. Error in Parliament — —	314

T H E

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CHAPTER I.

KING'S BENCH.

By the ancient Saxon Constitution there was only one Superior Court of Justice in the Kingdom; and that had Cognizance both of Civil and Spiritual Causes, viz. the *Wittena-gemote* or general Council, which assembled annually or oftner, wherever the King kept his Easter, Christmas or Whitfontide, as well to do private Justice as to consult upon public Business. At the Conquest, the Ecclesiastical Jurisdiction

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jurisdiction

The Praising Attorney:

jurisdiction was diverted into another Channel, and the Conqueror fearing danger from these annual Parliaments, contrived to separate their ministerial Power as Judges, from their deliberative, as Counsellors to the Crown. He therefore established a constant Court in his own Hall, thence called by Bracton, and other ancient Authors, *Aula Regia* or *Aula Regis*. This Court was composed of the King's great Officers of State resident in his Palace, and usually attendant on his Person, such as the Lord High Constable, and Lord Mareschall, who chiefly presided in Matters of Honour and of Arms, determining according to the Law Military, and the Law of Nations. Besides these there were the Lord High Steward, the Lord Great Chamberlain, the Steward of the Household, the Chancellor, whose peculiar Business it was to keep the King's Seal and examine all such Writs, Grants and Letters as were to pass under that Authority, and the Lord High Treasurer, who was the Principal Adviser in all Matters relating to the Revenue. These high Officers were assisted by certain Persons learned in the Law, who were called the King's Justiciars or Justices, and by the greater Barons of Parliament, all of whom had a Seat in the *Aula Regia*, and formed a kind of Court of Appeal, or rather of Advice in Matters of great Moment and Difficulty. All these in their several Departments, transacted all secular Business, both Criminal and Civil, and likewise the Matters of the Revenue, and over all presided one special Magistrate, called the Chief *Justiciar*, or *Capitalis Justiciarius totius Anglia*, who was also the principal Minister of State, the second Man in the Kingdom, and by Virtue of his Office, Guardian of the Realm in the King's absence, and this Officer it was who principally determined all the vast variety of Causes that arose in this extensive Jurisdiction, and from the plenitude of his Power, grew at last both obnoxious to the People, and dangerous to the Government which employed him.

This

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This great universal Court being bound to follow the King's Household in all his Progresses and Expeditions, the Trial of Common Causes therein was found very burthensome to the Subject, wherefore King John, who dreaded also the Power of the Justiciar, very readily consented to that Article which now forms the eleventh Chapter of Magna Charta, and enacts that *Communia placita non sequantur curiam Regis, sed teneantur in aliquo certo loco*. This certain Place was established in Westminster Hall, the Place where the *Aula Regia* originally sat when the King resided in that City, and there it hath ever since continued.

The *Aula Regia* being thus stripped of so considerable a Branch of its Jurisdiction, and the Power of the Chief Justiciar being also considerably curbed by many Articles in the Great Charter, the Authority of both began to decline apace, under the long and troublesome Reign of Henry the Third, and in further pursuance of this Example, the other several Officers of the Chief Justiciar, were under Edward the First (who new modelled the whole of our Judicial Polity) subdivided and broken into distinct Courts of Judicature. A Court of Chivalry was erected, over which the Constable and Marshal presided, as did the Steward of the Household over another, constituted to regulate the King's domestic Servants. The High Steward with the Barons of Parliament, formed an august Tribunal for the Trial of delinquent Peers, and the Barons reserved to themselves in Parliament the Right of reviewing the Sentences of other Courts in the last Resort. The Distribution of common Justice between Man and Man was thrown into so provident an Order, that the great Judicial Officers were made to form a Cheque upon each other, the Court of Chancery issuing all original Writs under the Great Seal to the other Courts. The Common Pleas being allowed to determine all Causes between private Subjects. The Exchequer managing the King's Revenue, and the Court of King's Bench retaining all

The Praesiding Attorney:

the Jurisdiction which was not cantoned out to other Courts, and particularly the Superintendence of all the rest by way of Appeal.

At this Time began the Study of the Common Law, and the Chief Justice of the King's Bench was no longer stiled *Capitalis Anglia Justiciarius*, but *Capitalis Justiciarius de placita coram Rege tenenda, vel Justiciarius de Banco Regis*.

The Court of King's Bench, so called because the King used formerly to sit there in Person, the Stile of the Court still being *coram ipso Rege*, is the supreme Court of Common Law in the Kingdom, consisting of a Chief Justice and three *puisne* Justices, who are by their Office the Sovereign Conservators of the Peace, and Supreme Coroners of the Land. Yet though the King himself used to sit in this Court, and still is supposed so to do, he did not, neither by Law is he empowered to determine any Cause or Motion but by the Mouth of his Judges, to whom he hath committed his whole Judicial Authority.

This Court, as was said, is the Remnant of the *Aula Regia*, is not, nor can be, from the very Nature and Constitution of it, fixed to any certain Place, but may follow the King's Person wherever he goes, for which reason all Process issuing out of this Court in the King's Name, are returnable, *ubicunque fuerimus in Anglia*.

The Jurisdiction of this Court extends generally over the whole Kingdom, and it hath Cognizance of all Criminal Causes, and such as are a Breach of the Peace. And my Lord Coke mentions the seven following Cases, in which Common Pleas or Civil Actions between Man and Man, may be holden in the King's Bench. 1st, It is to be observed that the King is out of the Statute and may sue in this Court. 2^{dly}, If a Man be in Custody of the Marshal or Prison Keeper of this Court, any Person may charge him with a personal Action, because he that is in Custody ought to have the Privilege of the Court. 3^{dly}, Any Action that is *quare vi et armis*,

Dr. New King's Bench Guide

armis, where the King, in strictness, ought to have a Fine. 4thly, Replevins may be removed hither. 5thly, Albeit, originally the King's Bench be restrained to hold Plea of any real Action, yet by a Mean it may, as when removed thither by a Writ of Error from the Common Pleas.

The Court of King's Bench is also a Court of Appeal, into which may be removed by Writ of Error, all Determinations of the Court of Common Pleas, and of all inferior Courts of Record in England, and to which a Writ of Error lies also from the Court of King's Bench in Ireland; and from this Court in all Actions commenced by Bill, by Stat. 27. Eliz. c. 8. a Writ of Error lies into the Court of Exchequer Chamber, before the Justices of the Common Pleas and Barons of the Exchequer.

C H A P. II.

Of the Original Writ.

THE Original is a Writ issuing out of Chancery, which gives Jurisdiction to that Court into which it is returnable, to hold Plea of the Matter therein specified. It is (says Mr. Justice Blackstone) a mandatory Letter from the King in Parchment, sealed with his great Seal, and directed to the Sheriff of the County wherein the Injury is committed or supposed so to be, requiring him to command the wrong Doer or Party accused, either to do Justice to the Complainant, or else to appear in Court and answer the Accusation against him. Whatever the Sheriff does in pursuance of this Writ, he must return or certify to the Court, together with the Writ itself.

Original Writs are either Optional or Peremptory, or in the Language of our Law, they are
either

The Practising Attorney:

either a *Precipe* or a *Si te fecerit securum*. The *Precipe* (vide page 7) is in the Alternative, commanding the Defendant to do the Thing required, or shew the Reason wherefore he hath not done it. The Use of this Writ is where *something certain is demanded by the Plaintiff, which is in the Power of the Defendant himself to perform*, as to pay a certain liquidated Debt, to perform a specific Covenant, to render an Account, and the like; in all which Cases, the Writ is drawn up in the Form of a *Precipe* or Command to do this, or shew Cause to the contrary, giving the Defendant his Choice to redress the Injury or stand the Suit. The other Species of original Writ, is called a *Si te fecerit securum*, from the Words of the Writ (vide page 7) which directs the Sheriff to cause the Defendant to appear in Court without any Option given him, provided the Plaintiff give the Sheriff Security effectually to prosecute his Claim. This Writ is used *where nothing is specifically demanded, but only a Satisfaction in general*, to obtain which, and administer complete Redress, the Intervention of some Court of Judicature is necessary; such are Writs of Trespass, or on the Case wherein no Debt or other specific Thing is sued for in certain, but only Damages to be assessed by a Jury, both Species of Writs are tested or witnessed in the King's own Name. *Witness ourself, at Westminster*, or wherever the Chancery may be held.

The Security here spoken of to be given by the Plaintiff for prosecuting his Claim, is common to both Writs, though it gives Demonstration only to the latter, the whole of it at present is become a mere Matter of Form, and John Doe and Richard Roe are always retained as the standing Pledges for this Purpose. The ancient Use of them was to answer for the Plaintiff, who in case he brought an Action without Cause, or failed in the Prosecution when brought, was liable to an Amercement from the Crown for raising a false Accusation.

GEORGE

GEORGE the Third, by the Grace of God, of ^{The Original} Great Britain, France, and Ireland, King, ^{Writ of Præcipe} Defender of the Faith, &c. To the Sheriff of ^{in Debt, com-} Middlesex, Greeting: ^{monly called, &} Command John Morgan, late ^{quod reddet.} of Westminster, in your County, Yeoman, that justly and without delay he render to Richard Williams, One Hundred Pounds which he owes him, and unjustly detains, as he saith, and unless he shall so do; and if the said Richard shall make you secure of prosecuting his Claim, then summon by good Summoners, the aforesaid John, that he be before us on the Morrow of All Souls, where-soever we shall then be in England, to shew where-fore he hath not done it, and have you there the Names of the Summoners and this Writ. Witness ourself, at Westminster, the 22d Day of October, in the 17th Year of our Reign.

This Writ the Sheriff executed according to the Command, by requiring the Defendant to pay the Debt demanded; and on Refusal, having taken Sureties of the Plaintiff to prosecute, then by summoning the Defendant to appear in Court at the Return, and indorsed the Names of the Pledges, and Summoners on the Writ, but it afterwards became customary that the Plaintiff might immediately become intitled to a *Capias* against the Defendant's Body (as will be hereafter shewn) to return that the Defendant *nihil habet per quod summoneri*, &c. hath nothing in his Bailiwick whereby he might summon him; and this is the Return now made when these Writs are sued out.

GEORGE the Third, &c. To the Sheriff of ^{The Original} Kent, Greeting: If William Mason shall give ^{Writ of Si se} you Security of prosecuting his Claim, then put by ^{fecerit securum,} Sureties and safe Pledges, Edward Carpenter, late of Maidstone, in your County, Ironmonger, that he be before us on the Morrow of all Souls, where-soever we shall then be in England, to shew. For that Whereas, (here the Plaintiff's Case must be fully

The Practising Attorney:

fully set forth) to the Damage of the said William of 50l. as it is said. And have you here the Names of the Pledges and this Writ. Witness ourself, at Westminster, the 22d Day of October, in the 17th Year of our Reign.

This Writ the Sheriff executed by taking Pledges as well of the Plaintiff to prosecute, as of the Defendant to appear in Court; but it is now usual for the Sheriff to return thereon, *Non est inventus, neque aliquod habet, per quod, &c.* that the Defendant is not found in his Bailiwick, nor hath any Thing, whereby he may be attached.

C H A P. III.

Of the Process issued to compel Obedience to the Original Writ.

THE foregoing Writs issue out of the Court of Chancery, as is before observed, and give Authority to the Court wherein they are returnable, to proceed on the Matter therein specified; therefore all Process subsequent thereto issue out of the Court below, and are tested in the Name of the Chief Justice; and here it will be necessary to observe the Distinction mentioned in the foregoing Chapter, between the *Precipe* and the *Si te fecerit securum*, in order properly to understand the Process issued to compel Obedience thereto respectively.

First then of the *Precipe*, which issues in Cases where something certain is demanded, which is in the Power of the Defendant to perform. If the Sheriff upon this Writ returned *Summonitus est*, and the Defendant did not appear at the Return, or within four Days afterwards, an Attachment or *Pone* issued against him, whereupon the Sheriff took Sureties for his Appearance, and if he then failed, a *Distringas* was awarded, whereby the Sheriff was commanded to Destrain the Defendant by all his Lands and Chattels

Chattels, so that he might have his Body in Court at the Return; upon which Writ the Sheriff levied upon the Effects of the Defendant to the Sum of Forty Shillings, for although he was commanded to Distrain him by *all* his Lands and Chattels, the Amount only of that Sum was taken on the first Distringas, but if at the Return thereof he did not appear, an Alias Distringas issued, whereupon four Pounds was levied, and next a Pluries for double that Sum, and so on until he did appear, upon which, the Issues levied were returned, he paying the Expence of the extra Writs sued out by reason of his Contempt of the Process of the Court; but if he obstinately persisted in not appearing, on a Petition, the Lords of the Treasury directed the Issues levied by the Sheriff to be paid over to the Plaintiff, in Satisfaction of the Debt due or Damages sustained by him, (and this is the proper way of proceeding against a Peer, or Member of Parliament, except only that no Attachment issues unless in Cases where the Attachment is the Original, as in Actions on the Case Trespas, &c. and indeed this Proceeding may be had against any private Person, but being attended with considerable Delay is now totally disused, except in the above Cases) or, the Plaintiff might proceed against the Pledges taken by the Sheriff for the Defendant's Appearance, but to prevent a Contempt of the Laws, which such a Proceeding must in many Cases necessarily create, the Plaintiff might, upon the Sheriff's Return of *nihil habet*, either on the Original or the Distringas, have a *Capias ad Respondendum* against the Body, and therefore in after-time it became, and now is the Custom, for the Sheriff to make a Return of *Nihil habet per quod Summoneri*, &c. upon the Original in the first Instance; whereupon the Plaintiff, as is before said, becomes intitled to a *Capias* on the Defendant's non Appearance thereto.

The Practising Attorney:

Attachment or
Pone.

GEORGE the Third, &c. Put by Sureties and safe Pledges, John Morgan, late of Westminster, in the County of Middlesex, Yeoman, that he be before us in fifteen Days of St. Martin, wheresoever we shall then be in England, to answer to Richard Williams in a Plea, that he render to him 100l. which he owes him, and unjustly detains as he saith, and to shew wherefore he was not before us on the Morrow of All Souls as he was summoned. And have there the Names of the Pledges and this Writ. Witness, William, Earl of Mansfield, at Westminster, the 6th Day of Nov. in the 17th Year of our Reign.

Adams.

Distringas.

GEORGE the Third, &c. To the Sheriff of Kent, Greeting: We command you that you Distrain John Morgan, late of Westminster, in your County, Yeoman, by all his Lands and Chattels within your Bailiwick, so that neither he, nor any one through him, may lay Hands on the same, until you shall receive from us another Command thereupon, and that you answer to us of the Issues of the same, and that you have his Body before us in eight Days of Saint Hillary, wheresoever we shall then be in England, to answer to Richard Williams, in a Plea, that he render to him 100l. which he owes him, and unjustly detains, as he saith, (*or if the Action be in Case, &c. in a Plea, That whereas, &c. setting forth the Plaintiff's Case*) and to hear Judgment of his many Defaults. Witness, William, Earl of Mansfield, at Westminster, the 28th Day of November, in the seventeenth Year of our Reign.

Adams.

As to the *Si te fecerit securum*, or Original, where-
in *no specific Thing is sued for in certain*, but only Damages to be assessed by a Jury. Actions of this kind generally requiring a more speedy Decision than the former, (for it must be observed, that anciently
Action

ACTIONS for Recovery of a Sum of Money, whether on Specialty or not, were used for as a Debt, it being a Device since introduced to avoid a Wager of Law, and for other Reasons to sue for Damages in these Cases. The Original (vide page 7.) was in Fact, an Attachment whereupon the Sheriff took Sureties for the Defendant's Appearance, and on default of his so doing, a *Capias ad Respondendum*, or *Distringas*, at the Option of the Plaintiff, was awarded without any intermediate Process being sued out.

CHAP. IV.

Of the Capias.

THIS Writ is properly ranked under the Head of such as issue to compel Obedience to the Original, but being the leading Process now usually sued out, I have for the Convenience of the Practicer, treated of in a distinct Chapter.

The Capias did not in its primitive use issue to arrest the Defendant for the Debt, &c. due, such a Proceeding would have been a Breach of Magna Charta, which directs that *nullus liber Homo capiatur, vel imprisonetur, aut aliquo alio modo distringatur nisi per legale Judicium parium suorum, aut per Legem Terræ*, that no Freeman shall be taken or imprisoned but by the Judgment of his Peers, or the Law of the Land, but for his Contumacy in not appearing to the Original, and to compel Obedience thereto, and on his Appearing he was discharged out of Custody, but the Sheriff was obliged to detain him Prisoner, and could not take Bail, unless he sued out a Writ of Mainprize, which commanded the Sheriff to take Sureties, called Mainpernors for his Appearance. The Difference between Bail and Mainpernors being, that the Former may imprison

or surrender the Defendant in discharge of themselves before the Time appointed for his Appearance, and are answerable only for that Matter for which they particularly stipulate. Mainpernors can do neither, but are barely Sureties for his Appearance at the Day, to answer that and all Charges whatsoever against him; but now the Practice both as to the Capias and Bill of Middlesex are in effect the same upon an Affidavit being made and filed, that the Debt due amounts to 10*l.* and in particular Cases to 20*l.* or upwards, the Defendant is on either of these Writs, or on a Latitat (which is only a Testatum Bill of Middlesex) arrested and held to special Bail, and where the Debt is under that Sum, or the Nature of the Case such as doth not require special Bail, he must be served with a Copy of the Writ, and Notice at the Foot of it to appear in Court at the Return thereof.

How to sue out
the special Capi-
as.

If the Debt for which the Plaintiff brings his Action amount to 10*l.* and if the Defendant be a Sailor or Soldier in his Majesty's Service, or lives in the Principality of Wales, or in either of the Counties Palatine to 20*l.* or upwards, he must first make Affidavit of such Debt, which may be sworn before a Judge of the King's Bench, the Philazer or a Commissioner, appointed for taking Affidavits in this Court, after which the Attorney draws his Instructions or Precipe, as it is usually called, to the Curfitor for the Original, suited to the Nature of the Case according to the following Precedents.

Precipe for Ori-
ginal in Debt.
(Vide cap. A.
page 13.)

Middlesex, Command John Morgan, late of
to wit. **C** Westminster, in the County of
Middlesex, Yeoman, that justly, &c. he render to
Richard Williams, 100*l.* which he owes him, and
unjustly detains, as he saith.

Precipe in Co-
venant. (Vide
cap. B. Page 14.)

Middlesex, Command John Morgan, late of, &c.
to wit. **C** Yeoman, that justly, &c. he per-
form to Richard Williams the Covenant made be-
tween

tween the said Richard and John, according to the Force, Form, and Effect of a certain Indenture made between them thereof, &c.

Kent, ff. **I**F William Mason shall make you secure, &c. then put, &c. Edward Carpenter, late of, &c. Ironmonger, that he be before our Lord the King, on the Morrow of All Souls, wheresoever, &c. to shew wherefore, with Force and Arms, &c. (the Plaintiff's Case) to the great Damage of the said William, and against the Peace of our said Lord the King, as he saith.

Precipe in Trespass. Vide cap. C. Page 14.

Kent, ff. **I**F William Mason shall give you Surety, to wit, &c. then put, &c. Edward Carpenter, late of, &c. Ironmonger, that he be before our Lord the King, in fifteen Days of St. Martin, wheresoever our said Lord the King shall then be in England, to shew, For that whereas, (here the Plaintiff's Case must be stated fully as in the Declaration) to the Damage of the said William, of 50*l.* as it is said.

Precipe in Case. (Vide cap. D. Page 14.)

Then ingross your Capias according to the following Precedents, which though properly the Philazer's Business, is for the sake of Expedition, usually done by the Attorney.

GEORGE the Third, &c. To the Sheriff of Middlesex, Greeting: We command you, that you take John Morgan, late of, &c. Yeoman, if he may be found in your Bailiwick, and him safely keep, so that you may have his Body before us in eight Days of the Purification, wheresoever we shall then be in England, to answer to Richard Williams, in a Plea, that he render to him 100*l.* which he owes * him, and unjustly detains, as it is said, and

Capias in Debt. (Vide Precipe A. Page 15.)

* The Original (and the subsequent Proceedings must of Course agree therewith) is sometimes in the *Debet and Detinet*, and sometimes in

The Praefising Attorney:

and have here this Writ. Witness, William, Earl of Mansfield, at Westminster, the 23d Day of January, in the 18th Year of our Reign.

Adams.

Capias in Case,
(Vide Precipe B.
Page 12.)

GEORGE the Third, &c. To the Sheriff of Middlesex, Greeting: We command you, that you take John Morgan, late of Westminster, in your County, Yeoman, if he may be found in your Bailiwick, and him safely keep, so that you may have his Body before us in eight Days of the Purification, wheresoever we shall then be in England, to answer to Richard Williams, in a Plea, that he perform the Covenant made between the said Richard and John, according to the Force, Form, and Effect of a certain Indenture made between them thereof, &c. and have there this Writ. *Witness, &c.*

Capias in Trespass.
(Vide Precipe C. Page 13.)

GEORGE the Third, &c. to the Sheriff of Kent, Greeting: We command you, that you take Edward Carpenter, late of, &c. Ironmonger, if he may be found in your Bailiwick, and him safely keep, so that you may have his Body before us on the Morrow of All Souls, wheresoever we shall then be in England, to shew wherefore with Force and Arms, &c. (the Plaintiff's Case) to the great Damage of the said William, and against our Peace, as it is said, and have there this Writ. *Witness, &c.*

Capias in Case.
(Vide Precipe D.
Page 13.)

GEORGE the Third, &c. to the Sheriff of Kent, Greeting: We command you, that you take Edward

in the *Detinet* only, that is, it either states that the Defendant *owes and unjustly detains* the Debt or Thing in question, or only that he *unjustly detains* it.—It is brought in the *Debet* as well as the *Detinet*, when sued by one of the original contracting Parties who personally gave the Credit against the other who personally incurred the Debt, or against his Heirs, if they are bound to the Payment, as by the Obligee against the Obligor, the Landlord against the Tenant, &c. But if it be brought by or against the Executor or Administrator, for a Debt due to or from the Testator, this not being his own Debt, shall be sued for, in the *Detinet* only.

ward Carpenter, late of, &c. Ironmonger, if he may be found in your Bailiwick, and himself safely keep, so that you may have his Body before us in fifteen Days of Saint Martin, wheresoever we shall then be in England, to answer to William Mason, in a Plea, *For that whereas*, (Copy your Precipe here from the beginning of the first Count) to the Damage of the said William, of 50 l. as it is said, and have there this Writ. *Witness, &c.*

Indorse upon the Back of this Writ, the Day of the Month when it is sued out, the Sum sworn to by the Plaintiff, and the Attorney's Name.

If the Action be notailable, you of course leave out the Indorsement for Bail, and add the following Notice at the Foot of the Writ, with a Copy of which Writ and Notice the Defendant must in this Case be personally served.

Mr. John Morgan, you are served with this Writ, Notice to be ad-,
to the Intent, that you may by your Attorney, ap-^{peared when Action}
pear in his Majesty's Court of King's Bench at the ^{notailable.}
Return thereof, being the Ninth Day of February, 1778, wheresoever his said Majesty shall then be in England, in order to your Defence in this Action.

There must be fifteen Days at least between the Teste and Return of all these Writs, which Teste must be anterior to the Cause of Action; now as this might be attended with great Delay to a Plaintiff, where his Cause of Action arises within that Space of Time, especially if in a Vacation, in which Case he would have to wait till the return of the Original (which may be tested in Vacation) in the ensuing Term before he could sue out his Capias, to prevent which Inconvenience, it is allowed (except in Outlawry) to make the Original and Capias returnable on the same Day, so that the same 15 Days serve in both Writs.

If your Writ is sued out in Term, you teste it on the first Day of the Term, if in Vacation, the last Day of the preceding Term.

Then

If the Defendant is removed out of the County ^{Testatum Capias} into which your Capias is directed, the Plaintiff may sue out a Testatum directed to the Sheriff of the County wherein he resides. But this Writ may, and usually is sued out, without any other Capias having preceded it. As when the Plaintiff wishes to lay the Venue of his Action in a different County to that in which the Defendant is arrested, which otherwise he could not do, without discharging the Bail of their Recognizance.

The Precipe for the Cursitor, is perfectly the same as for a common Capias, it being Instructions for the original Writ, not for the Capias, wherein you lay the Venue not in the County where the Defendant resides, but where you mean the Action to be tried.

GEORGE the Third, &c. To the Sheriff of Hertfordshire, (the County wherein the Defendant lives) Greeting: We command you, that you take, &c. (as in a common Capias to) To the Damage of the said William, of 50l. as it is said. And for that our Sheriff of Kent (the County in which you try your Action) lately returned to us that the said Edward is not found in his Bailiwick. Whereupon, on behalf of the said William, it is testified to us, that the said John runs up and down, and secretes himself in your County. And have you there this Writ. Witnels, &c.

Original Writs not running into Counties Palatine, if you wish to sue by Original, in these Cases it must be a Testatum, thus.

GEORGE the Third, &c. To the Chancellor of our County Palatine of Lancaster, or to his Deputy there, Greeting: We command you that by our Writ, under the Seal of our said County Palatine duly to be made out, and to be directed to the Sheriff of the same County: You command the same Sheriff that he take Edward Carpenter, late of, &c.

D

Ironmonger,

The Practising Attorney :

Ironmonger, if he may be found in our said County Palatine, and him safely keep, &c. (as before) To the Damage of the said William of 50l. as it is said. And for that our Sheriff of Kent lately returned to us, that the said Edward is not found in his Bailiwick. Whereupon on the behalf of the said William, it is sufficiently attested in our Court before us, that the said Edward runs up and down, and secretes himself in our said County Palatine. And have there this Writ. Witness, &c.

Cheshire.

In Cheshire, your Writ is directed *To the Chamberlain of our County Palatine of Chester, or to his Deputy.*

Durham.

And in Durham, *To the Reverend Father in God, John, by Permission, Lord Bishop of Durham, or to his Chancellor there, Greeting, &c.* and instead of saying *Our County Palatine*, say, *Your Bishoprick.*

Cinque Ports.

And to the Cinque Ports, *To our Constable of our Castle of Dover, or to his Deputy there, Greeting :*

Non omittas Capias.

This Writ is useful where a Defendant resides, or may be taken in a Liberty in which the Sheriff cannot arrest him but by Virtue of a Non omittas, which gives Command to disregard in general, all Liberties in the County, and is the same in Form as a common Capias, except that you introduce these Words, *We command you that you omit not by Reason of any Liberty in your County, but enter the same and take, &c.*

CHAP.

C H A P. V.

Of Actions by Bill and of the Bill and Process thereon.

THIS Court having by its fundamental Constitution, Power to determine all *Offences* and *Trespasses* by the common Law and Custom of the Realm, it needed no original Writ from the Crown, to give it Cognizance of any Misdemeanor in the County wherein it resides; yet as by the Court's coming into any County, it immediately superseded the ordinary Administration of Justice by the general Commissions of Oyer and Terminer, a Process of its own became necessary within the County where it sat, to bring in such Persons as were accused of committing any *forcible* Injury, this Process was called a Bill of that County in which the Court sat, and the Court usually sitting in the County of Middlesex, it is at present a Bill of Middlesex, tho' were it to sit in Kent it would be a Bill of Kent. On this Process the Defendant was taken into Custody, upon the Accusation of a *Trespass* laid against him; and when the Defendant is once in custody of the Court, all Actions of what Nature soever (except Real) may be prosecuted against him therein. A Way was therefore devised to save the Expence of an Original, by using this Process grounded on a supposed *Trespass*, as the Means of commencing a civil Action in this Court, to obtain which, the Plaintiff filed his Bill, which it is probable, was formerly addressed to the Court, as the Bill in the Common Pleas against a privileged Person now is varying only in the Stile of the Court, but at present is a mere Copy of the Declaration ingrossed upon Treble Penny stamped Parchment, and filed with the Clerk of the Declarations, and upon this Bill being filed, the Chief Clerk issued on the Process of the Court, upon which the Sheriff took the Defendant

The Practising Attorney:

Defendant into Custody, whatever the Plaintiff's Cause of Action might be, who was thereupon obliged to give Bail to every Action in suit against him, till the Stat. 13 Car. 2. and 12 Geo. 1. brought the Practice to its present Form; the first requiring the true Cause of Action to be specified in the Writ, became the Parent of the *Ac etiam*, and the latter, that an Affidavit be made and filed of a Debt amounting to 10l. or upwards, before any Process shall issue to arrest the Defendant, introduced the Distinction ofailable and notailable Actions.

It may appear somewhat mysterious, that a Writ should issue to arrest a Defendant, who by the Bill (the Foundation of the Action) is already supposed to be in Custody, to solve which Mystery we must suppose (for no other Solution can be given) that the Court to render its Jurisdiction the more extensive, and for the Ease of the Subject, winked upon so trivial an Inaccuracy. Now the Defendant being arrested, was obliged to appear, that is, put in Bail to all Actions against him, which Appearance being an Acknowledgment of such Custody, the Bill then stood apparently regular, at least indisputably so.

The Pledges for the Plaintiff's Prosecution, added to the Bill, seeing no Process Issues requiring them, are supposed to have been brought in use from the general Law of Frank-pledge, and were borrowed from the County and Hundred Courts, and first introduced here, in order to agree in some Respect, with the Practice of other Courts and with the Original.

Middlesex, **T**HE Sheriff is commanded to take to wit. Thomas Parker and John Doe *, if they may be found in his Bailiwick, and them safely keep, so that he may have their Bodies before our

* The printed Copies running in the plural Number, is the Reason that a fictitious Name, is inserted when there is only one Defendant.

our Lord the King at Westminster*, on Thursday next, after the Morrow of All Souls, to answer to Robert Franks in a Plea of Trespass, (if the Action beailable, you here introduce an *Ac etiam, And also, &c.* and in that Case scratch out the Notice at the Bottom, and indorse Bail for so much as is sworn to be due to the Plaintiff) and that he have there then this Precept,

By Bill †,

Lec.

Mr. Thomas Parker, you are served with this Process, to the Intent that you may by your Attorney, appear in his Majesty's Court of King's Bench at the Return thereof, being the 6th Day of November, 1777, in order to your Defence in this Action.

Indorse the Day and Year whereon you sue it out, the Sum sworn to (ifailable) and the Attorney's Name, and make a Precipe for the Office thus:

Middlesex Bill for Robert Franks against Thomas Parker. Precipe for Bill of Middlesex.

22d Oct. 1777.

Ret. on Wednesday next,
after the Morrow of All Souls.

A. B. (Attorney's Name.)

If the Action beailable, you draw a Score under the Defendant's Christian and Surname in the Precipe.

Take the Affidavit (ifailable) Bill of Middlesex and Precipe to the Bill of Middlesex Office in Clifford's Inn, where the Clerk will sign your Writ, for which pay in Term 6d. in Vacation 10d. and it is then complete, and you may get a Warrant thereon, or serve the Defendant with a Copy. When

* Action by Bill being grounded on a supposed Trespass committed in the County wherein the Court is sitting, which Trespass was not triable elsewhere than in that County, is the Reason that this Writ is returnable at a particular Place, and not *Ubiunque, &c.*

† By Bill, was signed at the Bottom, in all Probability, to show that the Action was by Bill, not by Original.

The Practising Attorney:

When the Action is bailable, the Plaintiff must make an Affidavit that his Debt amounts to 10l. or upwards, which may be sworn before the Clerk at the Bill of Middlesex Office, and having so done, you proceed as before directed, scratching out the Notice at the Foot of the Bill of Middlesex, and in the Body of it inserting an *Ac etiam*, suited to your Action, according to the following Precedents.— It is usual to make the *Ac etiam* for double the Sum sworn to, it ought properly to be the Sum at which the Damages are laid, or in Debt, the Penalty of the Bond, or amount of the Debt demanded, and indorse on your Writ, Bail for the Sum sworn to be due.

*Ac etiam in
Case on Pro-
mise.*

And also to a Bill of the said Robert (the Plaintiff) against the said Thomas for 20l. (double the Sum sworn to) upon Promises, according to the Custom of *the Court of the Lord the King, before the King himself*, to be exhibited.

In a Latitat you say, *According to the Custom of our Court before us to be exhibited.*

In Debt.

And also, &c. for 20l. Debt, according, &c. to be exhibited.

*Trespass for
taking away
Plaintiff's
Goods.*

_____ for taking and carrying away the Goods and Chattels of the said Robert, to his Damage of 20l. according, &c. to be exhibited.

Detinue.

_____ for detaining the Goods and Chattels of the said Robert, of the Value of 20l. according, &c. to be exhibited.

*Trover and Con-
vention.*

_____ for converting and disposing of the Goods and Chattels of the said Robert, to the Value of 20l. according, &c. to be exhibited.

Covenant.

_____ for Breach of Covenant, to the Damage of the said Robert, of 20l. according, &c. —for

_____ for the beating, bruising, wounding, and ill treating (as the Case may be) the said Robert, to his Damage of 40 l. (double the Sum ordered by the Judge, and indorse the exact Sum ordered on the Writ) according, &c. Assault on a Judges Order.

_____ Also to the several Bills of the said Robert against the said Thomas, for 20 l. Debt, and against the said John for 30 l. upon Promise according, &c. Against several Defendants.

Middlesex, **T**HE Sheriff is commanded, as before he hath been commanded, to take, &c. Alias Bill of Middlesex.

_____ The Sheriff is commanded, as oftentimes he hath been commanded, to take, &c. Pluries.

You pay only 2 d. signing the Alias and Pluries Bills of Middlesex.

_____ The Sheriff is commanded that he omit not by Reason of any Liberty in his County, but that he take, &c. Non Omittas.

Pay signing this as for a common Bill of Middlesex, and the Precipe is the same, only calling it *Alias Pluries*, or *Non omittas*, as the Case may be.

CHAP.

CHAP. VI.

Of the Latitat and suing the same out.

THE Latitat is a Testatum Bill of Middlesex, awarded on a supposed Return of *Non est inventus* by the Sheriff, on that Process which it recites, and that the Defendant *latitat et decurrit*, runs up and down and secretes himself in the County, to the Sheriff of which this Writ is directed, and therefore commands him to take the Defendant, as in the Bill of Middlesex.

Latitate.

GEORGE the Third, &c. To the Sheriff of Kent, Greeting : Whereas We lately commanded our Sheriff of Middlesex, that he should take Thomas Parker and John Doe, if they might be found in his Bailiwick, and them safely keep, so that he might have their Bodies before us at Westminster at a certain Day now past, to answer to Robert Franks in a Plea of Trespas, (insert an Actiam suitable to the Case, according to the Precedents given for Bills of Middlesex only, instead of according to the Custom of the Court of the Lord the King, before the King himself to be exhibited, you say, according to the Custom of our Court before us to be exhibited, this Writ running in the King's Name,) and our Sheriff of Middlesex, at that Day returned to us, that the afore-said Thomas and John are not found in his Bailiwick : Whereupon, on the behalf of the said Robert, it is sufficiently attested in our Court before us, that the said Thomas and John do run up and down, and secrete themselves in your County : Therefore we command you, that you take them, if they be found in your Bailiwick, and them safely keep, so that you may have their Bodies before us at Westminster, on Friday next, after eight Days of St. Martin, to answer

Dr. New King's Bench Guide.

25

answer to the aforesaid Robert of the Plea (if bailable, say of the Plea and Bill) aforesaid, and have you there then, this Writ. Witness, William, Earl of Mansfield, at Westminster, the Sixth Day of November, in the Eighteenth Year of our Reign. Lee.

If the Action be not bailable, the same Notice must be added, as is to the Bill of Middlesex, and the Defendant served with a Copy thereof.

There is no Occasion for any particular Number of Days between the Teste and Return of a Latitat, one Day is sufficient.

Make a Precipe for this Writ the same as for a Bill of Middlesex, then take the Affidavit, if bailable Precipe and Latitat, to Mr. Heberden in the King's Bench Office, who will sign it, pay him 2s. 6d. and then to the Seal Office, pay sealing, 7d.

GEORGE the Third, &c. To the Sheriff of ^{Alias†} Kent, Greeting: We command you, as before we have commanded you, that you take Thomas Parker and John Doe, if they may be found in your Bailiwick, and them safely keep, so that you may have their Bodies before us at Westminster, on Friday next after Fifteen Days of St. Martin, to answer Robert Franks in a Plea of Trespass (here insert a proper Ac etiam, or add a Notice at the Bottom, as before directed) and have there this Writ. Witness, &c. Lee.

The Pluries is the same as the Alias, only instead of *We command you as before, &c.* say, *We command you as oftentimes, &c.*

Nothing is paid for signing either the Alias or Pluries; sealing each, 7d.

E

The

† There being no Recital in the Alias, Pluries, or Non omittas that Defendant *latitat et decurrit*; this Writ in these Cases, loses the Name of Latitat, and assumes that of Capias.

The Praefiling Attorney :

Non omittas.

The Non omittas, is the same as the Alias, only you leave out the Words, *as before we have commanded you, &c.* and say instead, *We command you, that you omit not, by Reason of any Liberty in your County, but enter the same, and take, &c.*

You pay 2s. 6d. signing this Writ, and 1s. 4d. sealing.

Latitat into the
County Palatine
of Lancaster.

GEORGE the Third, &c. To our Chancellor of our County Palatine of Lancaster, or to his Deputy there, Greeting: Whereas we lately commanded our Sheriff of Middlesex (as in other Latitats to) Therefore we command you, that by our Writ under the Seal of our said County Palatine, duly to be made out, and to be directed to the Sheriff of the County of Lancaster, you command the same Sheriff, that he take, &c. as in other Latitats, only say, *our said County Palatine*, instead of *your County*.

For Directions to the other Counties Palatine and Cinque Ports, see under the Head of Capias, (P. 18)

All these Writs may be had at any Law Stationers, ready printed, with proper Blanks to be filled up.

C H A P. VII.

Of Bail to the Sheriff.

WHEN the Defendant is regularly arrested, he must either go to Prison for safe Custody, or put in special Bail to the Sheriff; for the Intent of the Arrest being only to compel an Appearance in Court at the Return of the Writ, that Purpose is equally answered, whether the Sheriff detains his Person, or takes sufficient Security for his Appearance, called Bail, (from the French Word Bailler, to deliver) because the Defendant is bailed or delivered

vered to his Sureties upon their giving Security for his Appearance, and is supposed to continue in their friendly Custody instead of going to Goal.

The Method of putting in Bail to the Sheriff, is by entering into a Bond or Obligation, with generally two Sureties, to insure the Defendant's Appearance at the Return of the Writ, which Obligation is called a Bail Bond. The Sheriff may, if he pleases, let the Defendant go without any Security, but that is at his Peril, for after once taking him, he is bound to keep him safely so as to be forth-coming (by putting in Bail above) otherwise an Action lies against him for an Escape; but on the other Hand, the Sheriff is obliged, by Stat. 23. Hen. 6. c. 10. to take (if tendered) a sufficient Bail Bond.

K NOW all Men by these Presents, that we, Bail Bonds Thomas Parker, of, &c. Charles Fairfield, of, &c. and John Groves, of, &c. are held and firmly bound to Sheriff of the County of Middlesex, in the Sum of 40l. (double the Sum indorsed on the Writ) of lawful Money of Great Britain, to be paid to the said Sheriff or his Attorney, Executors, Administrators or Assigns, for which Payment, well and truly to be made, we bind ourselves and each of us for himself, in the whole, our, and every of our Heirs, Executors and Administrators, firmly by these Presents. Sealed with our Seals. Dated, &c.

THE CONDITION of this Obligation is such, that if the above bound Thomas Parker, do appear before our Lord the King at Westminster, on Thursday next after the Morrow of All Souls, to answer to Robert Franks in a Plea of Trespass, and also to a Bill of the said Robert Franks, against the said Thomas Parker for 40l. upon Premises, according to the Custom of the Court of the Lord the King, before the King himself to be exhibited, then this Obligation to be void, otherwise to remain in full Force and Virtue.

The

The Practising Attorney:

The Bail Bond is on a double Six-penny Stamp, the Obligation is usually in double the Sum indorsed on the Writ, and the Sum indorsed, written in the Margin of the Bond.

CHAP. VIII.

Of the Defendant's Appearance by Original.

ALL Appearances were formerly in proper Person, and the Defendant, however far from the Court he lived, or how inconvenient soever it might be, was under a Necessity of personally attending at the Return of the Writ, in whatever Place the Court might be in England, and that he might have sufficient time for that Purpose, all original Writs were, and without any Reason, now are tested 15 Days at least before the Return. And moreover, that the Defendant might not be precipitated into a Law-suit, he might on the return Day of the Summons, send an Excuse, or as it is called, cast an *Essoign*, for not appearing, on which he had time given him to the next Term, and the Plaintiff could not proceed further till such Appearance was recorded. From hence the first Day in fact of the Term is called the *Essoign-Day*, which however so denominated, is at present known only as a Mark of Time for particuar Proceedings.

If the Defendant did not cast his *Essoign* on that Day, the Plaintiff might on the Morrow enter a *Ne Recipiat*, or Exception to such *Essoign*, this is therefore called the *Exception-Day*.

On the third Day the Sheriffs returned into Court the Writs respectively directed to them, and thence the third is called the *Retorna Brevium*, or Return Day.

And

Dr. New King's Bench Guide.

29

And on the fourth, such Defendants as had not cast Effoigns, and whose Effoigns then expired, were to appear in Court, to answer the Plaintiff's Charge; or rather to authorize the Court to proceed in the Action; for it is a Maxim, that no Proceedings can be had till the Defendant appears, and thereby acknowledge the Jurisdiction of the Court, which Appearance being recorded, the Court proceeded *ore tenus* & *ex officio*, abated the Writ, or gave further time to the Plaintiff to declare. The Reason assigned by Mr. Justice Blackstone, why the Defendant had till the fourth Day, after the Return of the Process, is, "That our Sturdy Ancestors held it beneath the Condition of Freemen to appear, or do any other Act at the precise time appointed or required." The fourth Day after the Return of the Writ, is therefore denominated the *Appearance Day*.

If the Defendant did not appear, the Plaintiff came into Court, and prayed farther Process, which Appearance of the Plaintiff being recorded, he had an Attachment, Distringas or Capias granted, according to the Will of the Court, dependant on the Sheriff's Return of the Original, and in this Case the Defendant being in contempt by his non-appearance, was not allowed any Effoign; when therefore it became the Practice for the Sheriff to return the Original, *Nihil habet per quod*, &c. of course to intitle the Plaintiff to his Capias immediately, and prevent the Defendant delaying him in his Suit by casting an Effoign; this Way of proceeding became an insupportable Grievance, the Defendant being taken into custody, without any previous Notice of a Writ issued against him, and unable to regain his Liberty, but by suing out a Writ of Mainprize, as is before shewn; for Remedy whereof, the Stat. 12 G. I. was made; after which, and now the Practice is, that if the Debt due to the Plaintiff, do not amount to 10l. the Defendant's Body shall not be taken, but he served with a Copy of the Writ, and a Notice to appear there-
to,

The Practising Attorney:

to, which Appearance must be entered in eight Days after the *quarto die post*, or Appearance Day in the Philazers Book, for which Purpose draw your Appearance Paper or Instructions thus :

Middlesex. **A**PPEARANCE for John Morgan, late of, &c. Yeoman, at the Suit of Richard Williams.

14th Nov. 1777.

A. B. (Attorney's Name.)

This take to Adams the Philazer, who will enter it in his Appearance Book.

If the Defendant does not appear in due Time, that is, within eight Days after the Return of the Writ, the Plaintiff may do so for him (it being necessary that an Appearance be entered) and deliver his Declaration, &c. for which Purpose, an Affidavit must be made of the Service of the Writ, which you take with the Appearance Paper to the Philazer; leave the Instructions and Affidavit with him, and he will enter the Appearance; in which Case you write on the Appearance Paper, "Filed according to the Statute."

Affidavit of Service of Writ.

In the King's Bench.

Between { Richard Williams, Plaintiff.
and
John Morgan, Defendant.

David Long, of, &c. Gentleman, maketh Oath, that he, this Deponent, did, on the tenth Day of October last, at Westminster, in the County of Middlesex aforesaid, personally serve John Morgan, the above-named Defendant, with a Writ of *Capias ad respondendum*, (*alias Pluries*, Lat. or whatever Writ it be) issued out, and under the Seal of this Honourable Court, at the Suit of the above-named

named Plaintiff, Richard Williams, and returnable therein in eight Days of the Purification, in this present Hilary Term, wheresoever our Lord the King should then be in England, by delivering to him a true Copy thereof, to which said Writ of Capias, and Copy, was subscribed an English Notice of the Intent and Meaning of such Service, pursuant to the Statute in such Case made and provided.

Sworn, &c.

DAVID LONG.

C H A P. IX.

Of filing Common Bail to a Suit by Bill.

IT hath been said, that formerly the Defendant was arrested on the Bill of Middlesex and Latitat, whatever might be the Plaintiff's Cause of Action, not indeed for that Cause, but a supposed Trespass; and Bail was thereupon put in for him to all Actions in suit against him; but since the Stat. 12 Geo. I. common Bail is reduced to a mere Appearance, the Sureties in this Case being imaginary Persons, and the same that are Pledges for the Plaintiff's Prosecution, viz. John Doe and Richard Roe.

Ingross your Bail-piece, as under, on a treble Six-penny stamped Piece of Parchment in this Shape.

Michaelmas

The Praesiding Attorney:

Common Bail
Piece.*Michaelmas Term, 18th George 3d.**Middlesex (to wit.) Thomas Parker, having
been served with Process, is delivered
to Bail, to**14th Nov. 1777.
A. B.**John Doe,
and
Richard Roe.**At the Suit of Robert Franks.*

This file with the Clerk of the Common Bails in the King's Bench Office, for which pay, whether filed by Plaintiff or Defendant in Term, or within six Days after, 1s. 2d. and after that time, 4d. more for a Post Terminum.

As the Appearance must be entered, so common Bail must be filed in eight Days after the Return of the Writ, or the Plaintiff may upon Affidavit of service of the Writ (Vide this Affidavit, page 30.) file it himself, in which Case you write thereon under the Attorney's Name, "Filed according to the Statute."

CHAP.

C H A P. X.

Of putting in Special Bail, or Bail above, by Original.

AFTER a Defendant is arrested, he must appear, that is, put in Special Bail to the Action, or Bail above, as it is called in distinction to Bail below, or Bail to the Sheriff, within the Times limited by the Rules of the Court, which see hereafter: For this Purpose, you must call upon the Philazer to attend one of the Judges with his Book, and having the Bail ready, he will take the Recognizance; but to save Trouble, and prevent confusion, it is best to make a Note for his Instruction, containing the County, the Plaintiff and Defendant's Names, the Names and Additions of the Bail, and the Sum sworn to. By this Recognizance, the Bail "jointly and severally undertake, "that if the Defendant be condemned in the Action, he shall pay the Costs and Condemnation, "or render himself a Prisoner, or they will do it "for him. Pay for putting in Bail, 16s. 6d."

Immediately after Bail is put in give Notice thereof to the Plaintiff's Attorney, that he may enquire into the Sufficiency of them, (for which Notice, see p. 35.)

The Manner of putting in Bail before a Commissioner being perfectly the same by Original as by Bill, see hereafter. And when the Bail Piece is transmitted, you get it allowed by a Judge, and then file it with the Philazer.

Note, If the Writ on which the Defendant is arrested be a Testatum, you must be careful to put in Bail in the proper County, viz. not that in which the Defendant is arrested, but in which the Cause of Action is said to arise, or in which a former Writ is recited to have issued.

C H A P. XI.

Of putting in Special Bail, or Bail above, by Bill.

INGROSS your Bail Piece thus on a double Shilling stamped Piece of Parchment in this Shape.

*Michaelmas Term in the Seventeenth Year
of the Reign of King George the Third.*

*London ff. Thomas Parker is delivered to Bail
upon a Cepi Corpus.*

*To Charles Fairfield of the Strand, in
C. D. } the County of Middlesex, Gun-
Attorney } smith,*

and

*John Groves of Cheapside, in the
City of London, Haberdasher.*

At the Suit of Robert Franks.

This

This take to the Judges Chambers, and having the Bail ready, the Clerk will take the Acknowledgment, to whom pay in Term 4s. in Vacation 5s. and then give the following Notice to the Plaintiff's Attorney.

In the King's Bench.

Between { Robert Franks, Plaintiff,
and
Thomas Parker, Defendant.

Take Notice, that Bail above was this Day put in for the above-named Defendant, before the Honourable Mr. Justice Ashurst, at his Chambers in Serjeants-Inn, Chancery-Lane, London, (if by Original, say, "was this Day put in for the above-named Defendant, with the Philazer, before the Hon. Mr. Justice Ashurst, &c.") and the Names of the Bail are Charles Fairfield, of the Strand, in the County of Middlesex, Gunsmith, and John Groves, of Cheapside, in the City of London, Haberdasher. Dated, &c.

Yours, &c.

To Mr. A. B. }
Plaintiff's Attorney.

C D.
Defendant's Attorney.

In the Country, you take the Bail Piece properly When acknowledged before a Commissioner. ingrossed to a Commissioner, and he will take the Recognizance, of which Caption, the following Affidavit must be made.

In the King's Bench:

Between { William Mason, Plaintiff,
and
John Carpenter, Defendant.

Henry Banks, of, &c. Gent. maketh Oath, That the Recognizance of Bail hereunto annexed, was duly acknowledged by Charles Fairfield and John Groves, the Bail therein named, in this Deponent's
F 2 Presence,

The Practising Attorney

Presence, before George Law, Esq. the Commissioner, who took the same.

Sworn, &c.

HENRY BANKS.

In the King's Bench.

Between { William Mason, Plaintiff,
and
John Carpenter, Defendant.

Notice that Bail Piece transmitted is left at Judges Chambers for his Allowance thereof.

Take Notice, that the Recognizance of Bail, acknowledged and transmitted in this Cause, was this Day left with the Honourable Mr. Justice Ashurst, at his Chambers in Serjeant's Inn, Chancery-Lane, London, for his Allowance thereof, and the Names of the Bail, &c. as before, if by Original, say, was this Day filed with the Philazer, and the Names of the Bail are, &c.

C H A P. XII.

Excepting to Bail.

IF the Plaintiff is not satisfied of the sufficiency of the Bail put in for the Defendant, he may except against, and thereby oblige them to appear in open Court, and justify themselves, which is done by their swearing themselves to be Housekeepers, and respectively worth double the Sum for which the Defendant is arrested after all their Debts are paid.

If the Bail be taken by a Commissioner, it is usual to send up an Affidavit of Justification along with the Bail Piece; for four Days only being allowed to justify after Exception, it would be impossible otherwise to do it in time, and if an Exception be then entered, the Affidavit may be read in Court, as a Justification, but this is seldom done,

it

it being usual to give the Plaintiff's Attorney, a Copy of such Affidavit at the same time you deliver a Notice of the Bail Piece, being transmitted and left at the Judge's Chambers.

Exception to Bail, if by Original, is entered in the Margin of the Philazer's Book; if by Bill, in that of the Judge before whom it was taken, in this Manner,

I except to this Bail.

A. B. Plaintiff's Attorney,
20th Nov. 1776.

After which you give Notice of such Exception to the Defendant's Attorney, thus,

King's Bench.

Franks against Parker.

I have excepted to the Bail put in for the above named Defendant, Your's, &c.

To Mr. C. D. } A.B. Plaintiff's Attorney,
Defendant's Attorney. } 20th Nov. 1776.

If the same Persons that are Bail to the Sheriff become Bail above, and the Plaintiff conceiving them to be insufficient, is desirous of a Justification, he must enter his Exception, and give Notice as before directed, that the Defendant may justify, if he thinks fit, but if he neglect so to do, the Plaintiff cannot take an Assignment of the Bail Bond, having the Bail therein as Sureties also on the Bail Piece, but must proceed by ruling the Sheriff, who is answerable if he takes insufficient Bail.

CHAP.

C H A P. XIII.

Of justifying, or perfecting Bail, and of adding fresh Bail and justifying.

AFTER the Plaintiff has entered his Exception, and given Notice thereof to the Defendant, the Bail must personally appear in Court within the Times limited by the Rules thereof, (which see hereafter) and justify themselves, and the Plaintiff may by his Council oppose such Justification; and if it appear that they are insufficient, the Court will reject them, and leave the Plaintiff at liberty to proceed upon the Bail Bond, or against the Sheriff.

In the King's Bench.

Between { Robert Franks, Plaintiff,
and
Thomas Parker, Defendant.

Notice of Justifying.

Take Notice, that Charles Fairfield and John Groves, the Bail, put in above for the Defendant in this Cause, and of whom you have already had Notice, will on Monday next, or so soon after as Council can be heard, justify themselves in open Court, as good and sufficient Bail for the above-named Defendant. Dated, &c.

Your's, &c.

C. D. Defendant's Attorney.

To Mr. A. B. Plaintiff's Attorney.

When the Day of Justification comes, get the Clerk of the Judge, before whom the Bail was taken notice, to bring the Bail Piece into Court, or if by
Original,

Original, get the Philazer to attend with his Book, give your Bail Piece to the Master, and having an Affidavit of the Service of the above Notice, and the Bail ready in Court, deliver same, with Instructions to your Council to move, to justify which Affidavit, being read and the Bail sworn, the Master will take the Justification and mark the Bail Piece.

In the King's Bench.

Between { Robert Franks, Plaintiff,
and
Thomas Parker, Defendant.

Samuel Noble, Clerk to C. D. of, &c. Gent. Affidavit of the
Attorney for the above named Defendant, maketh Service of No-
Oath, that he this Deponent did, on the 22d Day tice of Justifying
of Nov. Instant, serve a Notice upon Mr. A. B.
who acts as Attorney for the above named Plaintiff
in this Cause, as this Deponent believes, purporting
that Charles Fairfield and John Groves, the Bail put
in above for the said Defendant, and of whom the
said Mr. B. had already had Notice, would on Mon-
day then next justify themselves in open Court, as
good and sufficient Bail for the above named Defen-
dant, by delivering such Notice to a Clerk of the said
Mr. A. B. at his Chambers in the Inner Temple,
London.

Sworn, &c.

Samuel Noble.

If the Bail be taken before a Commissioner, and an Affidavit of Justification, (as is usual) sent up, the same may be read in Court and the Bail will be allowed thereon. You must, in that Case, give Notice that such Affidavit will be produced and read in open Court, as, and for a sufficient Justification of Bail for the Defendant, and having an Affidavit of the Service of that Notice, move by Council, as before directed.

When taken be-
fore a Commis-
sioner.

In

The Practising Attorney :

In the King's Bench.

Between { Robert Franks, Plaintiff,
and
Thomas Parker, Defendant. }

Affidavit of Justification.

Charles Fairfield, of, &c. and John Groves, of, &c. the Bail put in for the above named Defendant severally make Oath and say, and first this Depo-
nent, Charles Fairfield, for himself saith, that he is a Housekeeper at Maidstone aforesaid, and is worth the Sum of 40l. over and above what will pay and satisfy all Debts and Demands, due from him to any Person or Persons whomsoever. And this Depo-
nent, John Groves, for himself saith, that he is a Housekeeper at Maidstone aforesaid, and is worth the Sum of 40l. over and above what will pay and satisfy all Debts and Demands due from him to any Person or Persons whomsoever.

Sworn, &c.

*Charles Fairfield,
John Groves.*

How to add and justify.

It frequently happens, that one, or perhaps both of the Persons who are Bail above, cannot or will not justify, in which Case another or others must be procured for that Purpose in the stead of him or them so refusing, and in that Case, your Notice must be, "That George Adams, of, &c. will be added to the Bail already put in for the above named Defendant, and that the said George Adams, and Charles Fairfield, of whom you have already had Notice, will on Monday next, or so soon after as Council can be heard, justify themselves in open Court, as good and sufficient Bail for the said Defendant, &c." Apply to the Master or Philazer (as the Case may be) to take the Acknowledgment of this fresh Bail, which being done, proceed as before directed.

When

Dr. New King's Bench Guide.

When Bail are added, the former are not discharged of their Recognizance, but they all continue equally Sureties for the Defendant, unless the Court be moved to exonerate them, in which Case a Rule is made, that the Master strike their Names out of the Bail Piece.

When the Bail have justified, you draw up the following Rule of the Allowance of such Bail, with a Copy of which the Plaintiff's Attorney must be served, and the Rule itself (as in all Cases) at the same time shewn to him.

Monday next after fifteen Days of St. Martin, in the sixteenth Year of King George the Third,

Franks, }
Parker, } **U**PON reading the Affidavit of Samuel Noble. It is ordered that the Bail put in for the Defendant, who have this Day justified themselves in Court, be allowed and the Bail Piece filed upon the Motion of Mr. Bower.

By the Court.

If the Plaintiff's Attorney does not within a proper time except to the Bail, the Defendants may make an Affidavit of the Service of Notice, that such Bail was put in upon the back of the Bail Piece, for which Oath no Fee to be taken, and file the same with Mr. Heberden, who acts in this for the Master.

It is usual, where no Opposition can be made to the Bail upon Justification, to accept of such Justification before a Judge at his Chambers, which could not be done without the Consent of the Plaintiff's Attorney, and for which he generally is paid the Fee, which had the Justification been in Court, would have been given to Council.

Before the Bail is complete the Plaintiff's Attorney must be careful if he declare, to deliver his Declaration

The Practising Attorney:

claration conditionally, until Bail above be put in and perfected, which is called, delivering it *de bene esse*, and not to demand a Plea or accept it if tendered; for in any of these Cases he waives his Bail above, if it be not already put in, and the Defendant may file common Bail. If Bail above be put in, he then waives his Right to a Justification.

In Suits by Original, the Venue must be laid in that County into which the Writ issued, or the Bail are discharged of their Recognizance, unless it be a Testatum.

A T A B L E, Shewing,

First. **W**ITHIN what time Bail above shall be put in if acknowledged before a Judge.

If the Defendant be arrested in London or Middlesex, he must put in Bail above, after the Return of the Writ, in	} 4 Days.
If arrested in any other County, in	} 6 Days.

Secondly, If acknowledged before a Commissioner within forty Miles of London or Westminster.

In all Counties, except London and Middlesex, the Defendant has to put in Bail above, — — — —	} 6 Days.	} in all	} 14 Days.
And if taken by a Commissioner within forty Miles of London and Westminster, to transmit it — — — —	} 8 Days.		

Thirdly, If acknowledged before a Commissioner above 40 Miles from London or Westminster.

To

To put in Bail above,	6 Days.	} in all	} 21 Days.
If taken by a Commis- sioner above forty Miles from London or Westmin- ster to transmit it,	15 Days.		

Fourthly, Within what time the Plaintiff may except to the Bail put in above for the Defendant.

In all Cases the Plaintiff has to except against the Bail above put in for the Defendant after Notice thereof given _____ } 20 Days.

Fifthly, What Notice of Justification the Defendant must give after Bail is excepted to by the Plaintiff.

The Defendant must give two Days Notice of Justification, exclusive of the Day on which he gives the same, } 2 Days.
And if Sunday intervene, } 3 Days.

Sixthly, Within what Time the Defendant must justify.

In all Cases, if Notice of Exception be given four Days before the End of the Term, the Defendant must justify after such Notice, in _____ } 4 Days.

If Notice of Exception be given in the Vacation, or so late in Term, that the Defendant has not four Days for such Justification, he must justify on the first Day of the next Term.

If the Action be by Original, these Times are computed from the *quarto die post*, Sunday, if the last Day, is not to be accounted as one, and the Defendant has all the following Monday.

The Practising Attorney:

The above Times are punctually to be observed by the Defendant, or the Bail Bond may be assigned.

If the above Times prove insufficient for their respective Purpose, it is usual to apply by Summons before a Judge to have the same enlarged.

C H A P. XIV.

How to proceed upon the Bail Bond.

IF Bail above be not duly put in, or when excepted against, they do not justify in due time in Middlesex, apply to the Under Sheriff, at his Office in Tooke's Court, Curfitor-street, in London, to the Secondary of the Compter, where the Bail Bond was taken; and in the Country, to the Under Sheriff, who will indorse an Assignment of the Bail Bond to the Plaintiff; this Assignment take to the Stamp Office in Lincoln's-Inn, and get stamped with a double Sixpenny Stamp, and you may then sue out Writs against the Principal and Bail, serve them with Copies thereof, and proceed thereon, as in other Actions.

The Venue of your Action on a Bail Bond must be laid in that County in which the Bond was taken, or the Assignment made.

After you have once taken an Assignment of the Bail Bond, the Sheriff is not answerable for their Sufficiency, nor can you resort back to him, if they prove otherwise.

How to proceed
to stay the Pro-
ceedings on Bail
Bond.

If by neglect the Defendant has suffered the Plaintiff to take an Assignment of the Bail Bond, and is desirous to set the same aside, he must first justify his Bail as before directed, and then move the Court, or take out a Summons before a Judge at his Chambers, to shew cause why the Proceedings on the Bail Bond should not be set aside, which

which the Court will direct, the Defendant consenting to pay the Plaintiff his Costs incurred, by the Bail Bond being assigned, to be taxed by the Master, receiving a Declaration in the original Action, pleading to Issue, and taking short Notice of Trial, so that the same may be tried in Term, or if the Plaintiff has lost a Term, the Court will require that the Bail consent that Judgment be entered against them on the Bail Bond for the Plaintiff's Security. — But if the Plaintiff might have had Judgment in the original Action, had the Bail been completed in time, the Court will not stay the Proceedings on the Bail Bond.

If you proceed by Motion for the above Purpose, Notice thereof must be given to the Plaintiff's Attorney, and an Affidavit of the Facts, and of the Service annexed to a Copy thereof to ground such Motion.

C H A P. XV.

How to proceed against the Sheriff to compel a Justification, or for an Attachment.

IF the Defendant do not put in Bail above in time, and the Plaintiff conceives the Bail taken by the Sheriff be insufficient, or if the same Persons that are Bail to the Sheriff become Bail above, and the Plaintiff has the same Idea of their Insufficiency, (having in the latter Case entered an Exception in the Judge's, or Philazer's Book, and given Notice thereof as before directed) you take out a Rule with the Clerk of the Rules, for the Sheriff to return the Writ, pay him for same 4s. it is a four Day Rule, serve a Copy on the Sheriff or his Deputy, and at the Expiration of the Rule call upon him for a Return, if he return *Cepi Corpus*, or neglects to make any Return, in either Case you take
out

The Praising Attorney:

out a second Rule, for him to bring in the Body; what is meant by bringing the Defendant's Body into Court, is putting in and justifying Bail, this you serve as the last, and at the Expiration thereof, if the Bail already put in do not justify, or if others are not put in above and justified upon the following Affidavit, you move the Court for an Attachment against the Sheriff, whereupon a Rule will be granted absolute in the first Instance.

**Affidavit to
ground an At-
tachment a-
gainst the Sher-
iff.**

In the King's Bench.

Between { Robert Franks, Plaintiff,
and
Thomas Parker, Defendant.

Samuel Noble of, &c. Gent. maketh Oath, That he, this Deponent did, on the Day of last, serve the Rule to return the Bill of Middlesex (Latitat Capias, or whatever Writ it be) issued in this Cause hereunto annexed, by delivering a true Copy thereof to Mr. Benson, who acts as, or for the Sheriff of the County of Middlesex, and at the same time shewed him the said annexed Rule. And this Deponent further saith, that on the Day of last, he, this Deponent, searched at the King's Bench Office, with the proper Officer there, for the Return of the said Bill of Middlesex, in the said Rule mentioned, and thereupon found that the same was not returned and filed. And this Deponent further saith, that on the Day of Instant, he, this Deponent, in like Manner, as aforesaid, served the said Mr. Benson with the Rule, to bring in the Body of the said Defendant in this Cause also hereunto annexed, by delivering a true Copy thereof to the said Mr. Benson, and at the same time shewed him the said original Rule; and this Deponent saith, he hath duly searched the several Special Bail Books of the Right Honourable the Lord Chief Justice, and the other three Judges of this Honourable Court, and there-
upon

Dr. New King's Bench Guide

47

upon found that no special Bail was put in, or had justified themselves in this Cause.

SAMUEL NOBLE.

Sworn, &c.

Your Motion being made, draw up your Rule for an Attachment with the Clerk of the Rules, pay him for the same 5 s. take it to the Crown Office in the Temple where the Attachment is made out, directed to the Coroner of the County, pay for same 13 s. 4 d. carry your Attachment to the Coroner, who will make out a Warrant thereon, and attach the Sheriff. On the Return of the Attachment, call on the Coroner, who will pay you the Money, charging about a Guinea for his Fees.

If the Plaintiff takes an Assignment of the Bail Bond, and the Defendant, in order to his Motion for staying the Proceedings thereupon, puts in the same Bail above that are Bail to the Sheriff, he need not in this Case justify, for the Plaintiff has acknowledged their Sufficiency, by taking an Assignment of the Bail Bond.

C H A P. XVI.

Of the Declaration.

AFTER the Defendant has appeared, or filed common Bail, or the Plaintiff has done so for him according to the Statute, the next Proceeding in the Suit is the Declaration, in which the Plaintiff sets forth his Cause of Complaint at Length.

In

In the Declaration are to be considered principally, First, the Parties who must be competent Persons to prosecute and be made Defendant in the Action commenced, and not under any legal Disability or Restraint in that Behalf. Secondly, the Cause or Matter of Complaint, and how, and in what Manner it arose, and in this the Declaration ought to be clear, and the Charge certain, to which a Defendant may give a direct Answer, and immediately plead to issue thereon. Thirdly, the Time and Place, when and where the Injury was, or is said to have been committed, or Debt, &c. contracted. As to the Time in Actions of Debt, upon Bond, Note of Hand, or other Contract or Engagement, wherein the Day can with Certainty be ascertained, it is necessary such particular Day be stated in the Declaration; but in Actions on the Case, Trespass, &c. it is, in general, sufficient to state the Cause of Action to have arisen before the Commencement of the Suit, and within the Time limited for bringing such Action by the Statute of Limitations; and it is with great Reason this is allowed, as in many Cases it might be impossible for the Plaintiff to ascertain the Day with any Degree of Certainty, with regard to the Place where the Injury was committed in local Actions, the Venue or Visne (that is, the Vicinia or Neighbourhood in which the Injury is declared to be done) must be laid in that County in which the Cause of Action actually arose, and therefore called *Actions Local*, and these are usually such where the Possession of Land is to be recovered, or Damages for an actual Trespass, or for Waste, &c. affecting Land, but are not altogether confined to such Kind of Actions. Transitory Actions are such, wherein the Venue may be laid in any County, (but subject to be changed into its proper one by Rule of Court,) for which Reason they are called Actions Transitory, and are brought for Injuries that might have happened any where, as Debt, Detinue, Slander, and the like; in these the Plaintiff may declare

clare in what County he pleases, and then the Trial must be in that County in which the Declaration is laid. Lastly, in Respect to the Damage which the Plaintiff declares himself to have sustained; there is no particular Rule to direct the Quantum thereof, and the Plaintiff need only be careful that he make it sufficient to carry the Verdict found by the Jury; In all Actions on the Case, for Goods, upon a Bill of Exchange, Trespas, Assault, &c. the whole Sum found due, or assessed by the Jury passing under the Denomination of Damages.

The Declaration always concludes, "and therefore he brings Suit, &c." *Inde producit sectam*, by which Words, Suit, or *Secta*, (a sequendo) were antiently understood, the Witnesses or Followers of the Plaintiff; for in former Times the Law would not put the Defendant to the Trouble of answering the Charge till the Plaintiff had made out a probable Case, but the actual producing of Suit, the *Secta*, or Followers is now antiquated, and has been totally disused, at least, ever since the Reign of Edward the 3d. though the Form of it still continues; the &c. is said to supply these Words, *And good Proof of the Premises, when the Court will consider thereof*; which is very probable, seeing they are properly answered by the *Quando*, &c. in the Plea, viz. *when and where the Court will consider thereof*, which is always supplied by *when*, &c. As to the Pledges which are added at the End of Declaration, having mentioned their antient Use, and the Reason of their being so added already, it will be unnecessary here to say any thing concerning them.

C H A P. XVII.

Of the antient Practice in Respect of Declarations by Original.

IT has been before said, that the Business of this Court by Original, was as in the Common Pleas,

H

from

The Practising Attorney :

from time to time heard *Ore tenus*, at the Bar of the Court; the chief Clerk, after the Defendant's Appearance, taking up the Cause, before which it was in the Hands of the Philazer, began his Entry with the Proceſs which had been ſued forth againſt the Defendant, to compel the Appearance, viz. when the Action was in Debt, Covenant, Annuity, Account, Detinue and Replevin; the Proceſs being by Summons, the Entry began thus,

Kent, ſſ. **J**OHN MORGAN, late of, &c. was *ſummoned* to answer Richard Williams, of a Plea, that he render to him 100 l. which he owes to, and unjuſtly detains from him, &c. And whereupon the ſaid Richard, in his proper Perſon complains, That whereas, &c. (and ſo on through the Declaration).

And if in Caſe, Treſpaſs, Trover and Ejectment, the Proceſs being by Attachment, the Declaration began thus:

Kent, to wit. **J**OHN CARPENTER, late of, &c. was *attached* to answer William Maſon of a Plea, That whereas, &c. (transcribing the Original.) And whereupon the ſaid William Maſon in his proper Perſon complains, That whereas, &c. (here the Declaration came in, which was only a ſecond Transcript of the Original.

The Defendant had a Copy of the Declaration delivered to him by his Attorney or Clerk in Court, and time given to plead thereto, as was alſo to the Plaintiff to reply, and again to the Defendant to re-join, and ſo on from time to time, till the Caſe come to Iſſue.

Note, We ſtill vary the formal Beginning of the Declaration, according to the Caſe of Action, viz. in Debt, &c. by reciting, that the Defendant was *ſummoned* to answer, and in Caſe, &c. that he was *attached*.

C H A P. XVIII.

Of the antient Practice By Bill.

THE Original Design and principal Establishment of the King's Bench, after the Separation of the Courts at Westminster, being to determine criminal Proceedings, it is said Civil Causes were the By Business of the Court, and entered by way of Memorandum, from which it may be concluded, that the Declaration was begun with the same Memorandum, which is now prefixed before the Issue. The Declaration being drawn from the Bill filed, was entered on the Roll, and by the Clerks in the King's Bench Office, (who were then many, and did the Business for the Attornies at large, as the Clerks in the Exchequer of Pleas do now) delivered over from the Plaintiff's to the Defendant's Clerk, or Attorney in Court, with a Rule of Court, ordering, that the Defendant should plead thereto within the Time limited, by such Rule (hence our modern Rules to plead, which are never drawn up, and serve only to enhance the Expence of a Suit, and add an additional stumbling Block to the Attorney, who is frequently, by such Means, precipitated into an irregular Judgment) and the Attornies at large were not, till after the Fire of London, permitted to file their own Pleadings. When the Time for the Defendant to plead expired, his Clerk in Court returned the Declaration with a Plea indorsed thereon, if he pleaded the general Issue, or entered the same in the General Issue Book of the Office, which was called, giving a Plea on the Book-side, and in the Books of our present Practice, it is laid down as a Rule, that the Plaintiff's Clerk, or Attorney, may make up the Issue or Paper Book, in all Cases where the Plea may be given on the Book-side, without saying

what such Pleas are, it being to be understood to be the General Issue; for if the Defendant pleaded any special Plea, he filed it with the Clerk of the Papers for the Plaintiff to bespeak a Copy thereof, and then the Clerk of the Papers had a Right to make up the Paper Book, or Issue, from the Pleadings of the Parties, which Privilege they still retain, and in this Office, the Clerk of the Rules and other Officers of the Court, had their Seats, and therein all Business was transacted by these Clerks from their Clients Instructions.

C H A P. XIX.

The present Practice in Respect to Declarations.

HOWEVER the antient Practice, in respect to the Mode of declaring, pleading, &c. by Original and Bill might differ, they are now reduced to the same Standard; the Declaration itself indeed somewhat differs in the formal Beginning of it, that by Original running thus:

Michaelmas Term, in the Eighteenth Year of the Reign of King George the Third.

Lee.

Kent, ff. **J**OHAN MORGAN, late of, &c. Yeoman, was summoned, (or was attached, according to the Nature of the Action,) to answer Richard Williams, of a Plea, that he render to him 100 l. which he owes to, and unjustly detains from him, &c. or of a Plea of Trespas on the Case,

Dr New King's Bench Guide.

61

Case, (as the Action may be.) And whereupon the said Richard, by A. B. his Attorney, complains, That whereas, &c. (and so on through the Declaration.)

And by Bill thus :

Michaelmas Term, in the Eighteenth Year of the Reign of King George the Third.

Lee.

London, ff. **R**OBERT FRANKS complains of Thomas Parker being in the Custody of the Marshal of the Marshalsea, of our Lord the now King, before the King himself. For that whereas, &c. (through the Declaration.)

At the End of the Declaration by Bill, you add the Pledges and Attorney's Name, the first of which is omitted when the Action is by Original.

A. B. Atty. for the Plt.	} Pledges	{ John Doe,
— Atty. for the Deft.		
	to	and
	profecute,	Rich. Roe.

The Declaration being drawn, is (instead of being delivered over to the Defendant's Attorney) to be copied on Treble Penny stamped Paper, and if the Defendant has appeared, or put in Bail, delivered to the Attorney, by whom such Appearance or Bail is entered.

If he has not appeared, or the Abode of the Attorney appearing cannot be found, you file it with the Clerk of the Declarations (whose Business it is to file and pye, that is, place the same in alphabetical Order, for which he is intituled to 2s. a Term, called Termages, but which is seldom paid, few Attornies

The Practising Attorney: 2

tornies demanding an Account of the Monies received by him for Declarations filed, which is suffered to strike the Ballance between them) and give the Defendant the following Notice thereof.

In the King's Bench.

Between } Robert Franks, Plaintiff.
and
Thomas Parker, Defendant.

Take Notice, That a Declaration of this present Michaelmas Term is filed with the Clerk of the Declarations in the King's Bench Office in the Inner Temple, London, against you, at the Suit of the above-named Plaintiff, *conditionally, until Common Bail be filed, or until Special Bail be put in, and perfected for you in this Cause, (this Suit to your Case)* wherein he declares against you in an Action of Trespass upon the Case (as it may be) upon several Promises, which he lays to his Damage of 40l. And unless you plead thereto in Days, Judgment will be signed against you by default. Dated, &c.

Yours, &c.

To Mr. Thomas Parker, } A. B. Plaintiff's Attorney.
the above-named Defendant.

The Plaintiff's Attorney charges 4d. per Sheet (72 Words making a Law Sheet) for the Copy of the Declaration, besides Stamps, and 4d. filing the Defendant's Warrant of Attorney. By Rule, Michaelmas, 5 Anne 1706, It is ordered, that the Attorney for the Defendant at the Time he enters the Appearance, or files common Bail, shall deliver to the Plaintiff's Attorney the Warrant or Authority taken by him from his Client to defend the Suit, who is to file the same together with the Warrant given by the Plaintiff to prosecute, with the Secondary; and that the De-

Defendant's Attorney shall, on the Delivery of the Copy of the Declaration pay 4*d.* for filing such Warrant; this Warrant however is now never delivered over according to the Directions of this Rule, and indeed but few Attornies take any from their Clients, on being retained to prosecute or defend Suits, but is always charged for on the Back of the Declaration, and if the Defendant's Attornies refuse to pay for the same, Judgment may be signed by the above Rule, and it is for filing these Warrants, that when the Roll is carried in, the Attorney is charged 8*d.* filing Warrants of Attorney.

Judgment cannot be signed on the Defendant's Attorney's refusing to pay for the Copy of the Declaration; the Rule 12 W. III. 1700, directing, that on such Refusal it shall be filed with the Clerk of the Declarations.

Upon the Return of the Writ, or Process on which the Defendant is arrested, or with a Copy of which he is served, the Plaintiff may deliver, or file his Declaration, and proceed in the Suit, and need not wait till the Defendant has appeared or put in Bail, yet Judgment cannot be signed against him, before such Appearance or Bail be put in.

I have before mentioned in what Cases it is necessary the Declaration be delivered, *De bene esse*, and the Caution to be observed in that Respect previous to the Bail being perfected.

It was observed, that when once a Defendant is taken into Custody of the Marshal, or Prison Keeper of the Court, for a supposed Trespass being then a Prisoner of the Court, he may be prosecuted for any other Species of Injury. And the Practice (as regulated by the Court) is, that if a Defendant be actually in Custody, or has filed common Bail, any Creditor may deliver a Declaration against him during such Custody, or of the Term wherein Bail is filed, without taking out further Process: And where a Plaintiff files common Bail, according to the Statute, he may deliver any Number of Declarations against the Defendant, for whom he

The Practising Attorney :

he files the same; this is called, declaring *by the Bye*; but Declarations by the Bye, cannot be delivered in Actions where Special Bail is put in; for in that Case the Declaration must agree with the *Ac etiam* of the Writ, nor against Bail on Recognizance for the like Reason.

A T A B L E, shewing the several Times within which a Defendant must plead to the Declaration delivered, or filed against him.

First. **W**HEN the Writ or Process whereon the Defendant is arrested and held to special Bail, is returnable before the third Return of the Term. If the Venue be laid in London or Middlesex, and the Defendant lives within 20 Miles of the former, the Declaration being delivered or filed four Days before the End of the Term, he must plead thereto in } 4 Days.

Secondly, In the above Case, when the Action is notailable, and an Appearance or common Bail only is required, the Declaration being filed or delivered *de bene esse*, Defendant must plead in } 8 Days.

Thirdly, If common Bail be filed, or an Appearance entered for the Defendant, before the Delivery of the Declaration, the Plaintiff may deliver the same with Notice, to plead peremptorily in } 4 Days.

Note, The Defendant has in all Cases eight Days to enter an Appearance, or file Common Bail, which is the Reason that he also has eight Days to plead, notwithstanding he lives within 20 Miles of London,

don, when the Action is not bailable, and Declaration is delivered *de bene esse*, for Judgment cannot be signed till the Defendant is in Court.

Fourthly, If the Venue be laid in any other County or City than London or Middlesex, or the Defendant lives above 20 Miles from London, whether the Action be bailable or not, he has to plead } 8 Days.

Fifthly, In the above Cases, the Declaration must be delivered four Days, exclusive of the Day of delivery, before the End of the Term in which the Writ is returnable, or the Defendant is intitled to an Imparance, and, must plead within the first four Days of the next Term.

Sixthly, When the Writ is returnable on the Third, or other later Return, if the Declaration be filed before the Essoign Day of the subsequent Term, the Defendant must plead thereto within the first four Days of such subsequent Term.

Seventhly, If the Writ be returnable in one Term, and the Declaration is not delivered till upon, or after the Essoign Day of the next, the Defendant is intitled to an Imparance, and must plead within the first four Days of the third Term.

Eighthly, And if the Plaintiff do not declare some time within the next Term, after that in which the Writ is returnable, the Defendant may immediately after the End thereof, sign a Non Profs for want of declaring in due Time, and need not accept a Declaration though tendered.

Note

The Practising Attorney:

Note, In Actions by Original, a Rule to declare, and demand of a Declaration must be given before a Non Profs can be signed.

Ninthly, Pleas to the Jurisdiction of the Court, or in Abatement, ought to be pleaded before the Rule for Pleading is out, and cannot be pleaded after a common Imparance, or unless the Declaration be delivered after Term, or so late in the Term, that the Defendant is not bound to plead to it that Term, in both which Cases, the Defendant may within the first four Days, inclusive of the next Term, plead any Plea in Abatement, or to the Jurisdiction of the Court, as of the preceding Term, but if such Plea be not delivered or left in the Office in time, such Plea is not to be received, and the Plaintiff may sign his Judgment.

Tenthly, Every Plea of Tender, or other Plea, wherein the Defendant alledges he was *always ready* to do any particular Act, must be pleaded in like Manner as Pleas in Abatement. If it be a Plea of Tender, the Money must be brought into Court, and the Receipt of the proper Officer wrote on the Plea, before it is filed.

PRECEDENTS of Declarations.

Michaelmas Term, 18th Geo. III.

Lee.

Middlesex, **J** JOHN MORGAN, late of, &c. Declaration in Debt on Bond, By Original.
to wit. Yeoman, was summoned to answer Richard Williams in a Plea, that he render to him 100*l.* which he owes to, and unjustly detains from him, &c. And whereupon, the said Richard, by A. B. his Attorney, complains, That whereas the said John, on the first Day of October, in the Year of our Lord 1777, at Westminster, in the County of Middlesex, by his certain writing Obligatory, sealed with the Seal of the said John, and to the Court of our Lord the King now here shewn, Profert, the Date whereof is the same Day and Year aforesaid, acknowledged himself to be held, and firmly bound to the said Richard, in the Sum of 100*l.* to be paid to the said Richard, when he, the said John should be thereunto requested. Yet, the said John, (although often requested) hath not yet paid the said 100*l.* to the said Richard, but hath hitherto wholly refused, and still doth refuse to pay him the same, to the Damage of the said Richard, of 10*l.* and therefore he brings Suit, &c. Breach.

A. B. Attorney for the Plaintiff.

-----Attorney for the Defendant.

Michaelmas Term, 18 Geo. III.

Lee.

Middlesex, **R** ROBERT FRANKS complains of Declaration on a Judgment. By Bill.
to wit. Thomas Parker, being in the Custody of the Marshal of the Marshalsea of our Sovereign Lord the King, before the King himself, in a Plea, that

The Practising Attorney:

Recital of the
Judgment,

and that it re-
mains undif-
charged, and
Execution hath
not been had
thereon.

Per quod Actio
accrevit.

Breach,

that he render to the said Robert 100 l. which he owes to, and unjustly detains from him. *For that whereas*, the said Robert heretofore, *to wit*, in the Term of Saint Hilary, in the Seventeenth Year of the Reign of our said Lord the King, in the Court of our said Lord the King, before the King himself, the said Court then, and still being held at Westminster, in the said County of Middlesex, by the Consideration of the same Court, recovered against the said Thomas 100 l. which in the same Court were adjudged to the said Robert, for his Damages which he had sustained, as well by occasion of not performing certain Promises and Undertakings, lately made by the said Thomas to the said Robert, as for his Costs and Charges by him laid out and expended in and about his Suit in that Behalf, whereof the said Thomas is convicted, as by the Record and Proceeding thereof, remaining in the said Court of our said Lord the King, before the King himself at Westminster aforesaid, manifestly appears; which said Judgment still remains in full Force and Effect in no wise reversed, annulled or discharged. And the said Robert hath not yet obtained Execution thereof against the said Thomas, *by Reason* whereof, an Action hath accrued to the said Robert, to demand, and have of, and from the said Thomas, the said 100 l. Nevertheless, the said Thomas, (altho' often requested) hath not yet paid the said 100 l. to the said Robert, but hath hitherto wholly refused, and still doth refuse to pay the same, to the Damage of the said Robert of 10 l. and therefore he brings Suit, &c.

A. B. Atty. for the Plt.	} Pledges	{ John Doe,
— Atty. for the Deft.		
	} prosecute,	{ Richard Roe.

Declaration on
a Mutuatus.

— That whereas the said Thomas, on the ninth Day of April in the Year of our Lord, 1777,
at

at Westminster, in the County of Middlesex, had borrowed of the said Robert the Sum of 80l. of good and lawful Money of Great-Britain, to be paid to the said Robert, when he the said Thomas should be thereto afterwards requested; yet the said Thomas *Breach.* (although often requested) hath not paid the said Sum of 80l. to the said Robert, but hath hitherto altogether refused, and still doth refuse, to the Damage of the said Robert of 10l. and therefore he brings Suit, &c.

Hertfordshire, **R**OBERT FRANKS, Assignee of *Declaration in Debt on a Bail-Bond against the principal.*
 to wit. A. B. Esq. Sheriff of the County of Hertford aforesaid, according to the Form of the Statute in such Case lately made and provided, complains of Thomas Parker, otherwise called, &c. (the Defendant's Addition as in the Bail Bond) being in the Custody of the Marshal of the Marshalsea, of our Sovereign Lord the King, before the King himself, of a Plea that he render to him forty Pounds, which he owes to, and unjustly detains from him. For that whereas the said Thomas, after the first *Defendant arrested.* Day of Trinity Term, in the Year of our Lord, 1706, to wit, on the 18th Day of June in the Year of our Lord, 1777, at Hertford, in the County aforesaid, was arrested by the said A. B. then and still being Sheriff of the County aforesaid, at the Suit of the said Robert, by virtue of a certain Writ of our said Lord the King, called a Latitat, prosecuted out of the Court of our said Lord the King, before the King himself, the said Court then and still being at Westminster in the County of Middlesex, by the said Robert against the said Thomas, in a Plea of Trespass; and also to a Bill of the said Robert against the said Thomas for 40l. upon Promises, according to the Custom of the said Court of our Lord the King, before the King himself, to be exhibited returnable in the same Court on Thursday next after the Morrow *and Bail taken for his Appearance.* of All Souls then next following. And whereas the said A. B. then and still being Sheriff of the said

Ch: Practising Attorney:

Profert of the
Bond.

Bail Bond as-
signed.

Profert of the
Assignment,

said County as aforesaid, of and upon that Arrest, took Bail for the said Thomas, to wit, the said Thomas and Charles Fairfield and John Groves, which said Thomas, Charles, and John, on the 22d Day of July, in the Year aforesaid, at Hertford aforesaid, in the County aforesaid, by their writing obligatory, which, as well sealed with the Seal of the said Thomas, as with the Seals of the said Charles and John, the said Robert brings here into Court, the Date whereof is on the same Day and Year last aforesaid, by which said writing obligatory, the said Thomas acknowledged himself to be held and firmly bound to the said A. B. then and still being Sheriff of the said County, by the Name of A. B. Esq. Sheriff of the County of Hertford, in the said 40l. to be paid to the said Sheriff or his Assigns, when he the said Thomas, should be thereunto requested with a Condition to the said writing obligatory under-written, that if the said Thomas should appear before our said Lord the King on Thursday next after the Morrow of all Souls, to answer to the said Robert of a Plea of Trespass, and also to a Bill of the said Robert against the said Thomas for 40l. upon Promises, according to the Custom of the Court of our said Lord the King, before the King himself, to be exhibited, that then the said Obligation should be void, otherwise to remain in full Force and Virtue, as by the said Writing obligatory and the Condition thereof more fully appears. And whereas afterwards, to wit, on the 20th Day of November, in the Year aforesaid, at Hertford aforesaid, in the County aforesaid, the said A. B. (the said 40l. being then unpaid) at the Request, Costs and Charges of the said Robert the Plaintiff, in that Suit, by the Name of A. B. Esq. Sheriff of the County of Hertford, by his Indorsement made upon the said writing obligatory, under the Hand and Seal of the said Sheriff, and attested in the Presence of C. D. and E. F. two credible Witnesses, *which*, sealed with the Seal of the Office of the said A. B. the said Robert brings

brings here into Court, the Date whereof is on the same Day and Year last mentioned, assigned to the said Robert the said writing obligatory, according to the Form of the Statute in such Case lately made and provided, of which said Premises the said Thomas, afterwards, to wit, on the same Day and Year and at the Place aforesaid had notice. And the said Robert in fact saith, that the said Thomas did not appear before our said Lord the King at Westminster, on Thursday next after the Morrow of All Souls, in the said Condition mentioned, according to the Form of the said Condition whereby the said writing obligatory became forfeited. *By reason* of which said Premises and by force of the Statute in such Case lately made and provided, an Action hath accrued to the said Robert, as Assignee of the said A. B. as aforesaid, to demand and have of the said Thomas the said 40l. yet the said Thomas (although often requested) hath not yet paid the said 40l. to the said Robert, but hath hitherto wholly refused and still doth refuse to pay him the same, to the Damage of the said Robert of 20l. and therefore he brings Suit, &c.

Averment that the Defendant did not appear.

Per quod Actio, &c.

Breach.

For that whereas one Thomas Parker, after the first Day of Trinity Term in the Year of our Lord 1706, to wit, on the 18th Day of June in the Year of our Lord 1777, at Hertford, in the County aforesaid, by the said A. B. then and still being Sheriff of the County aforesaid, was arrested at the Suit of the said Robert, by virtue of a certain Writ of our Lord the King called a Latitat, prosecuted out of the said Court of our said Lord the King, before the King himself, the said Court then and still being at Westminster, in the County of Middlesex, by the said Robert, against the said Thomas, in a Plea of Trespass, and also to a Bill of the said Robert against the said Thomas for 40l. upon Promises, according to the Custom of the Court of our said Lord the King, before the King himself, to be exhibited returnable in the same Court on Thursday next after the Morrow of All Souls then

Declaration in Debt on a Bail Bond against one of the Bail.

Bail Bond given. then next ensuing. And whereas the said A. B. then and still being Sheriff of the said County of Hertford, as aforesaid, of and upon that Arrest took Bail for the said Thomas, to wit, the said Thomas, and the said Charles, and one John Groves, which said Thomas, Charles and John, on the Twenty-second Day of July, in the Year aforesaid, at Hertford aforesaid, in the County aforesaid,

Profert of Bail Bond. by their writing obligatory, (which, sealed as well with the Seal of the said Charles, as with the Seals of the said Thomas and John, the said Robert brings here into Court,) the Date whereof is on the same Day and Year last aforesaid, acknowledged themselves and each of them, jointly and severally acknowledged himself to be held and firmly bound to the said A. B. then and still being Sheriff of the said County of Hertford as aforesaid, by the Name of A. B. Esq. Sheriff of the County of Hertford, in the said 40l. to be paid to the said Sheriff or his Assigns, when they the said

Condition.

Charles, Thomas and John, or either of them, should be thereunto required with a Condition to the said writing obligatory underwritten, that if the said Thomas should appear before our said Lord the King at Westminster, on the said Thursday next after the Morrow of all Souls, to answer to the said Robert in a Plea of Trespass, and also to a Bill of the said Robert against the said Thomas for 40l. upon Promises, according to the Custom of the Court of our said Lord the King, before the King himself, to be exhibited, then that the said obligation should be void, otherwise to remain in full Force and Virtue as by the said writing obligatory and the Condition thereof more fully appears. And whereas the said Forty Pounds, being then unpaid, afterwards, to wit, on the twentieth Day of November in the Year aforesaid, at Hertford aforesaid, in the County aforesaid, at the Request, Costs and Charges of the said Robert the Plaintiff in that Suit, the said A. B. by the Name of A. B. Esq. Sheriff of the County of Hertford by his Indorsement upon the said writing obligatory, under the Hand and Seal of the said Sheriff, made and attested in the Presence of C. D. and

Bail Bond assigned.

and E. F. two credible Witnesses, *which*, sealed with the Seal of the Office of the said A. B. the said Robert brings here into Court, the Date whereof is on the same Day and Year last aforesaid, assigned to the said Robert, the said writing obligatory, according to the Form of the Statute in such Case lately made and provided, of which said Premises, the said Charles afterwards, to wit, on the same Day and Year, and at the Place last aforesaid had notice. *And* the said Robert in fact saith, that the said Thomas did not appear before our said Lord the King at Westminster, on the said Thursday next after the Morrow of All Souls, in the said Condition mentioned, according to the Form of the said Condition, whereby the said writing obligatory became forfeited. By reason of which Premises, and by Force of the Statute in such Case made and provided, an Action hath accrued to the said Robert, as Assignee of the said A. B. Sheriff of the County aforesaid, to demand and have of the said Charles the said 40l. yet the said Charles, &c. (as before)

Profer of the Assignment.

Averment that the Defendant did not appear.

Per quod Actio accrevit.

Breach,

Michaelmas Term, 18th Geo. III.

Lee.

London, **E**DWARD CARPENTER, late of, &c. to wit, was attached to answer William Mason of a Plea of Trespass on the Case. And whereupon the said William, by A. B. his Attorney, complains, That whereas one Thomas Thompson, on the 10th Day of October, in the Year of our Lord, 1777, at London, to wit, in the Parish of St. Mary-le-Bow in the Ward of Cheap, according to the Usage and custom of Merchants, from Time immemorial, used and approved of, made his certain Bill of Exchange in writing, his own proper Hand being thereto subscribed, bearing Date the same Day and Year aforesaid, and then and there directed the said Bill to the said Edward, by the Name of "Mr. E. Carpenter, London," and thereby required the said

Declaration on a Bill of Exchange the Payee against the Acceptor — By Original.

K

Edward

The Practising Attorney:

Edward, one Month after the Date thereof, to pay to the said William, by the Name of "Mr. W. Mason," or Order, the Sum of 50l. for Value received, by the said Edward, and then and there delivered the said Bill to the said William, which said Bill of Exchange the said William, afterwards, to wit, on the same Day and Year aforesaid, at London aforesaid, in the Parish and Ward aforesaid, according to the said Usage and Custom, presented and shewed to the said Edward for his Acceptance thereof; and the said Edward then and there according to the said Usage and Custom of Merchants accepted the said Bill, to pay the same according to the Exigency thereof; by reason of which said Premises, and by Force of the said Usage and Custom, and by the Law of Merchants, the said Edward became liable to pay to the said William, the said Sum of Money in the said Bill of Exchange mentioned according to the Tenor and Effect of the said Bill; and being so liable, he the said Edward, in Consideration thereof, afterwards, to wit, on the same Day and Year aforesaid, at London aforesaid, in the Parish and Ward aforesaid, undertook, and to the said William then and there faithfully promised to pay to him the said Sum of 50l. in the said Bill of Exchange contained, according to the Tenor and Effect of the said Bill, and of his Acceptance thereof as aforesaid.

Declaration by
an Indorsee a-
gainst the drawer
of a Bill of Ex-
change.

—That whereas the said John, on the 10th Day of October, in the Year of our Lord, 1777, at London, to wit, in the Parish of St. Mary-le-Bow, in the Ward of Cheap, according to the Usage and Custom of Merchants from Time immemorial, used and approved of, made his certain Bill of Exchange in writing, his own proper Hand being thereunto subscribed, bearing Date the same Day and Year aforesaid, and then and there directed the said Bill to one Edward Thompson, by the Name and Addition of "Mr. E. Thompson, London," and thereby required the said Edward, one Month after the Date thereof, to pay to one William Jones, by the Name of

of "Mr. W. Jones," or Order, the Sum of 40l. **Bill indorsed.**
 for Value received, by the said Edward; and then and
 there delivered the said Bill to the said William; and the
 said William, afterwards, to wit, on the same Day
 and Year afore said, at London afore said, in the Pa-
 rish and Ward afore said, according to the said Usage
 and Custom of Merchants, indorsed the said Bill
 of Exchange, his own proper Hand being thereunto
 subscribed, and thereby appointed the Contents there-
 of to be paid to the said Richard, and then and
 there delivered the said Bill so indorsed, to the said
 Richard, "which said Bill of Exchange, afterwards, **Bill accepted.**
 "to wit, on the same Day and Year afore said, at Lon-
 "don afore said, in the Parish and Ward afore said, the
 "said Richard, according to the said Usage and Cus-
 "tom, presented and shewed to the said Edward for
 "his Acceptance thereof; and the said Edward then
 "and there, according to the said Usage and Custom
 "of Merchants, accepted the said Bill, to pay the
 "same according to the Exigency thereof, and then
 "and there had Notice of the said Indorsement so
 "made thereon as afore said: And the said Richard **Not paid.**
 "in fact faith, that afterwards, to wit, on the 13th
 "Day of November, in the Year afore said," (the
 Day Bill due allowing three Days Grace) "at Lon-
 "don afore said, in the Parish and Ward afore said,
 "he the said Richard presented and shewed the said
 "Bill so indorsed and accepted as afore said, to the
 "said Edward for Payment thereof, and then and
 "there requested the said Edward to pay to him
 "the said Richard, the said Sum of 40l. in the said
 "Bill mentioned, according to the Tenor and Effect
 "of the said Bill, and of the said Indorsement so
 "made thereon, and of the said Acceptance of the
 "said Edward thereof as afore said. And that the
 "said Edward did not then, nor hath he at any
 "other Time hitherto paid the said Sum of Money
 "in the said Bill of Exchange contained, or any
 "Part thereof to the said Richard, but then and there
 "neglected and refused so to do, and still doth refuse;
 "neither hath the said William yet paid or caused to
 "be paid the same or any Part thereof to the said
 "Richard

The Praefiling Attorney:

" Richard, of all which said Premises the said John,
 " afterwards, to wit, on the same Day and Year
 " last aforesaid, at London aforesaid, in the Parish
 " and Ward aforesaid, had Notice." (If the Bill be
 not accepted, leave out that part, marked with two
 Commas, and in its stead insert the following,
 marked with only one) ' And the said Richard in
 ' fact saith, that afterwards, to wit, on the 13th
 ' Day of November, in the Year aforesaid, (the
 ' Day Bill due) ' at London aforesaid, in the Parish
 ' and Ward aforesaid, he the said Richard, presented
 ' and shewed the said Bill of Exchange so indorsed
 ' as aforesaid, to the said Edward for his Acceptance
 ' and Payment thereof, and then and there requested
 ' the said Edward to accept and pay the same to him
 ' the said Richard, according to the Tenor and Effect
 ' of the said Bill, and of the said Indorsement so
 ' made thereon as aforesaid. And that the said
 ' Edward did not then, nor hath he at any other
 ' Time hitherto accepted the said Bill, or paid the
 ' said Sum of Money therein contained, or any
 ' Part thereof to the said Richard, but then and
 ' there neglected and refused so to do, and hath
 ' hitherto altogether refused; neither hath the said
 ' William yet paid or caused to be paid the same or
 ' any Part thereof to the said Richard, of all which
 ' said Premises the said John afterwards, to wit, on
 ' the same Day and Year last aforesaid, at London,
 ' aforesaid, in the Parish and Ward aforesaid, had
 ' Notice.' By reason whereof, and also by Force of
 the said Usage and Custom, and by the Law of
 Merchants, the said John became liable to pay to the
 said Richard, the said Sum of Money in the said
 Bill of Exchange contained, whenever afterwards he
 the said John should be thereunto requested. And
 being so liable, he, the said John, in Consideration
 thereof, afterwards, to wit, on the same Day and
 Year last aforesaid, at London aforesaid, in the
 Parish and Ward aforesaid, undertook, and to the
 said Richard then and there faithfully promised to
 pay to him the said Sum of Money in the said Bill
 con-

contained, whenever afterwards he the said John should be thereunto requested. —

— That whereas one Edward Thompson on the 10th Day of October, in the Year of our Lord, 1777, at London, to wit, in the Parish of St. Mary-le-Bow, in the Ward of Cheap, according to the Usage and Custom of Merchants, from Time immemorial, used and approved of, made his certain Bill of Exchange in writing, his own proper Hand being thereto subscribed, bearing Date the same Day and Year aforesaid, and then and there directed the said Bill to one William Jones, by the Name and Addition of "Mr. W. Jones, London," and by the said Bill required the said William, one Month after the Date thereof to pay to the said John, by the Name of "Mr. Jn^o. Morgan," or Order, the Sum of 40l. for Value received, by the said William, and then and there delivered the said Bill to the said John, and the said John, afterwards, to wit, on the same Day and Year aforesaid, at London aforesaid, in the Parish and Ward aforesaid, according to the said Usage and Custom of Merchants, indorsed the said Bill, his own proper Hand being thereto subscribed, and thereby appointed the Contents thereof to be paid to the said Richard, and then and there delivered the said Bill so indorsed to the said Richard (here state the Acceptance or Non-acceptance of the Person on whom the Bill is drawn, as the Case may be, according to the foregoing Precedents) by reason whereof, and according to the said Usage and Custom, and by the Law of Merchants, the said John became liable to pay to the said Richard, the said Sum of Money in the said Bill of Exchange contained, whenever afterwards, he the said John should be thereunto requested. And being so liable, he the said John, in Consideration thereof afterwards, to wit, on the same Day and Year last aforesaid, at London aforesaid, in the Parish and Ward aforesaid; undertook, and to the said Richard then and there faithfully promised to pay

Declaration by
an Indorsee a-
gainst the Payee

Bill indorsed.

to

to him the said Sum of 40*l.* in the said Bill contained, whenever afterwards he the said John should be thereunto requested.——

Declaration on
a Bill of Ex-
change, by the
Drawer against
the Acceptor.

—— That whereas the said Richard on the 16th Day of August, in the Year of our Lord, 1777, at Westminster, in the County of Middlesex, according to the Usage and Custom of Merchants, made his certain Bill of Exchange in writing, his own proper Hand being thereto subscribed, bearing Date the same Day and Year aforesaid, and then and there directed the said Bill to the said Edward, by the Name of "Mr. Edward Carpenter, London," and thereby required the said Edward, one Month after the Date thereof, to pay to one John Jones, or Order, the Sum of 40*l.* for Value received, by the said Edward, and then and there delivered the said Bill to the said John, which said Bill of Exchange, afterwards, to wit, on the same Day and Year aforesaid, at Westminster aforesaid, in the County aforesaid, according to the said Usage and Custom was shewn and presented to the said Edward for his Acceptance thereof. And the said Edward then and there, according to the said Usage and Custom of Merchants, accepted the said Bill, to pay the same, according to the Exigency thereof. And the said Richard, in fact saith, that afterwards, to wit, on the 19th Day of September, in the Year aforesaid, at Westminster aforesaid, in the County aforesaid, the said Bill of Exchange, was shewn and presented to the said Edward for Payment thereof; and the said Edward was then, and there requested, to pay the said Sum of Money, in the said Bill of Exchange contained, to the said John; but the said Edward then and there wholly refused to pay the same; by reason whereof the said Richard afterwards, to wit, on the same Day and Year last aforesaid, at Westminster aforesaid, in the County aforesaid, was forced to pay, and did pay to the said John, the said Sum of Money in the said Bill of Exchange contained, of all which said Premises, the said Edward afterwards, to wit, on the same Day and Year last

last aforesaid, at Westminster aforesaid, in the County aforesaid, had Notice. By reason whereof, and by force of the said Usage and Custom, and by the Law of Merchants, the said Edward became liable to pay to the said Richard the said Sum of Money in the said Bill of Exchange contained, when he, the said Edward should be thereunto afterwards requested. And being so liable, he, the said Edward, in Consideration thereof afterwards, to wit, on the same Day and Year last aforesaid, at Westminster aforesaid, in the County aforesaid, undertook and to the said Richard, then and there faithfully promised to pay to him the said Sum of Money in the said Bill of Exchange contained, when he the said Edward should be thereunto afterwards requested.

— That whereas the said Thomas, on the first Day of September, in the Year of our Lord 1777, at Westminster, in the County of Middlesex, made his certain Note in writing, commonly called a Promissory Note, his own proper Hand being thereto subscribed, bearing Date the same Day and Year aforesaid, and then and there delivered the said Note to the said Robert, by which said Note, said Thomas, ten Days after the Date thereof, promised to pay to the said Robert, by the Name of Mr. Robert Franks, or order, the Sum of 20*l.* for Value received by the said Thomas; by reason whereof, and also by force of the Statute, in such Case made and provided, the said Thomas became liable to pay to the said Robert, the said Sum of Money in the said Note contained, according to the Tenor and Effect of the said Note. And being so liable, he, the said Thomas, in Consideration thereof afterwards, to wit, on the same Day and Year aforesaid, at Westminster aforesaid, in the County aforesaid, undertook, and to the said Robert, then and there faithfully promised to pay to him the said Sum of Money in the said Note contained, according to the Tenor and Effect of the said Note.

Declaration on a
Promissory Note,
the Payee a-
gainst the Draw-
er.

— That

Declaration on a
Promissory Note,
the Indorsee a-
gainst the Payee.

Note indorsed.

That whereas one Timothy Diver, on the first Day of June, in the Year of our Lord 1777, at Westminster, in the County of Middlesex, made his certain Note in writing, commonly called a Promissory Note, his own proper Hand being thereto subscribed, bearing Date the same Day and Year aforesaid, and then and there delivered the said Note to the said Thomas, by which said Note, the said Timothy, ten Days after the Date thereof, promised to pay to the said Thomas, by the Name of Mr. Thomas Parker, or Order, the Sum of 20*l.* for Value received by the said Timothy. And the said Thomas afterwards, to wit, on the same Day and Year aforesaid, at Westminster aforesaid, in the County aforesaid, indorsed the said Note, and thereby appointed the said Sum of Money in the said Note contained, to be paid to the said Robert, and then and there delivered the said Note so indorsed, to the said Robert. And the said Robert, in fact saith, that afterwards, to wit, on the 13th Day of June, in the Year aforesaid, at Westminster aforesaid, in the County aforesaid, he, the said Robert presented, and shewed the said Note so indorsed, to the said Timothy for Payment thereof, and then and there requested the said Timothy, to pay him the said Robert, the said Sum of Money, in the said Note contained, according to the Tenor and Effect of the said Note; but the said Timothy, then and there, neglected and refused so to do, and hath hitherto altogether refused, of all which said Premises the said Thomas afterwards, to wit, on the same Day and Year last aforesaid, at Westminster aforesaid, in the County aforesaid, had Notice. By reason whereof, and also by force of the Statute, in such Case made and provided, the said Thomas became liable to pay to the said Robert, the said Sum of Money in the said Note contained, whenever afterwards he, the said Thomas, should be thereunto requested. And being so liable, he, the said Thomas, in Consideration thereof, afterwards

wards, to wit, on the same Day and Year last, aforesaid, at Westminster aforesaid, in the County aforesaid, undertook, and to the said Robert then and there faithfully promised to pay to him the said Sum of Money in the said Note contained, whenever afterwards he the said Thomas should be thereunto requested.

And, whereas the said Thomas, afterward, to wit, on the same Day and Year last aforesaid, at Westminster aforesaid, in the County aforesaid, was indebted to the said Robert, in the Sum of 40l. of lawful Money of Great Britain, for divers Goods, Wares, and Merchandizes, by the said Robert, before that time sold and delivered to the said Thomas at his special Instance and Request. And being so indebted, he, the said Thomas, in Consideration thereof afterwards, to wit, on the same Day and Year aforesaid, at Westminster aforesaid, in the County aforesaid, undertook, and to the said Robert, then and there faithfully promised to pay to him the said Sum of Money last mentioned, whenever afterwards he the said Thomas, should be thereunto requested.

Count for Goods
sold and deli-
vered.

And whereas the said Thomas afterwards, to wit, on the same Day and Year aforesaid, at Westminster aforesaid, in the County aforesaid, in Consideration that the said Robert had before that Time at the like Instance and Request of the said Thomas, sold and delivered to the said Thomas divers other Goods, Wares and Merchandizes, undertook, and to the said Robert, then and there faithfully promised to pay to him so much Money as the Goods, Wares and Merchandizes last mentioned were reasonably worth, at the Time of the Sale and Delivery thereof, whenever afterwards, he the said Thomas should be thereunto requested. And the said Robert doth aver, that the Goods, Wares, and Merchandizes, last mentioned, at the Time of Sale and Delivery thereof, were reasonably worth other

Quantum vale-
bant.

L

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The practising Attorney:

40 l. of like lawful Money, to wit, at Westminster aforefaid, in the County aforefaid, whereof the faid Thomas afterwards, to wit, on the fame Day and Year aforefaid there had notice.

Work and Labour done and performed, and Materials found.

And whereas the faid Thomas afterwards, to wit, on the fame Day and Year aforefaid, at Westminster aforefaid, in the County aforefaid, was indebted to the faid Robert in another Sum of 40 l. of like lawful Money, for Work and Labour, Care and Diligence of the faid Robert, by the faid Robert and his Servants and Workmen, before that time done, performed and beftowed for the faid Thomas, in and about his Bufinefs and Affairs, and for divers Materials and neceffary Things found and provided, used and applied by the faid Robert, in and about fuch Bufinefs and Affairs, and at the like Inftance and Request of the faid Thomas. And being fo indebted, he the faid Thomas, in Confideration thereof afterwards, to wit, on the fame Day and Year aforefaid, at Westminster aforefaid, in the County aforefaid, undertook, and to the faid Robert then and there faithfully promifed to pay to him the faid Sum of Money laft mentioned, whenever afterwards, he the faid Thomas fhould be thereunto requested.

Quantum meruit.

And whereas the faid Thomas afterwards, to wit, on the fame Day and Year aforefaid, at Westminster aforefaid, in the County aforefaid, in Confideration, that the faid Robert, by himfelf and his Servants and Workmen, had before that Time, at the like Inftance and Request of the faid Thomas, done, performed, and beftowed for the faid Thomas, in and about his Bufinefs and Affairs, other Work, and Labour, Care and Diligence; and had found and provided, used and applied divers other Materials, and neceffary Things in and about fuch laft-mentioned Affairs and Bufinefs undertook, and to the faid Robert then and there faithfully promifed to pay to him fo much Money as

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he reasonably deserved to have, for the Work, Labour, Care, Diligence, Materials, and necessary Things last mentioned, whenever afterwards, he, the said Robert should be thereunto requested. And the said Robert avers, that he reasonably deserved to have for the Work, Labour, Care, Diligence, Materials, and necessary Things last mentioned, other 40l. of like lawful Money, to wit, at Westminster aforesaid, in the County aforesaid, whereof the said Thomas, afterwards, to wit, on the same Day and Year aforesaid there had notice.

And whereas the said Thomas afterwards, to wit, on the same Day and Year aforesaid, at Westminster aforesaid, in the County aforesaid, was indebted to the said Robert, in another Sum of 40l. of like lawful Money, for so much Money by the said Robert, before that Time lent and advanced to the said Thomas, and at his like Instant and Request. And being so indebted, he the said Thomas, in Consideration thereof, afterwards, to wit, on the same Day and Year aforesaid, at Westminster aforesaid, in the County aforesaid, undertook, and to the said Robert then and there faithfully promised to pay to him the said Sum of Money last mentioned, whenever afterwards he the said Thomas should be thereunto requested.

And whereas the said Thomas afterwards, to wit, on the same Day and Year aforesaid, at Westminster aforesaid, in the County aforesaid, was indebted to the said Robert, in another Sum of 40l. of like lawful Money, for so much Money by the said Robert before that time laid out, expended and paid to and for the Use of the said Thomas, and at his like Instant and Request, and being so indebted, he the said Thomas, in Consideration thereof, afterwards, to wit, on the same Day and Year aforesaid, at Westminster aforesaid, in the County

Money lent and advanced.

Money paid, laid out and expended.

The Practising Attorney :

aforesaid, undertook, and to the said Robert, then and there faithfully promised to pay to him the said Sum of Money last mentioned, whenever afterwards, he the said Thomas, should be thereunto requested.

Money had and received.

And whereas the said Thomas afterwards, to wit, on the same Day and Year aforesaid, at Westminster aforesaid, in the County aforesaid, was indebted to the said Robert in another Sum of 40 l. of like lawful Money, for so much Money by the said Thomas before that time had and received to and for the Use of the said Robert. And being so indebted, he the said Thomas, in Consideration thereof, afterwards, to wit, on the same Day and Year aforesaid, at Westminster aforesaid, in the County aforesaid, undertook and to the said Robert, then and there faithfully promised to pay to him the said Sum of Money last mentioned, whenever afterwards he the said Thomas, should be thereunto requested.

Infimal computation.

And whereas the said Thomas, and the said Robert, afterwards, to wit, on the same Day and Year aforesaid, at Westminster aforesaid, in the County aforesaid, accounted together of, and concerning divers Sums of Money by the said Thomas, before that Time, due and owing to the said Robert, and then being in arrear and unpaid; and upon that Account, the said Thomas was then and there found in arrear, and indebted to the said Robert, in another Sum of 40 l. of like lawful Money; and being so found in arrear and indebted, he the said Thomas, in Consideration thereof, afterwards, to wit, on the same Day and Year aforesaid, at Westminster aforesaid, in the County aforesaid, undertook, and to the said Robert then and there faithfully promised to pay to him the said Sum of Money, last mentioned, whenever afterwards he the said Thomas should be thereunto requested. Nevertheless, the said Thomas, in no wise regarding his said several Promises and Undertakings,

Breach

takings, so by him, in Manner and Form aforefaid made, but contriving and fraudulently intending, craftily and subtilly, to deceive and defraud the said Robert, in this Behalf, hath not yet paid to him the said several Sums of Money above-mentioned, or any of them, or any part thereof. (Although so to do, the said Thomas was requested by the said Robert afterwards, to wit, on the same Day and Year aforefaid, and often since at Westminster aforefaid, in the County aforefaid.) But the said Thomas to do this, hath hitherto wholly refused, and still doth refuse, to the Damage of the said Robert, of 40l. and therefore he brings Suit, &c.

For that the said Thomas on the first Day of July, in the Year of our Lord 1777, at the Parish of St. Giles's in the Fields, in the County of Middlesex, with Force and Arms, to wit, with Swords, Sticks, Staves, Knives and Fists, made an Assault upon the said Robert, and then and there beat, bruised, wounded, and ill treated him, and struck and hit the said Robert divers grievous Blows and Strokes, in and upon divers Parts of his Body, insomuch that his Life was thereby greatly despaired of, and by Reason whereof, the said Robert was then and there forced and obliged to lay out and expend, and actually did lay out and expend a large Sum of Money, to wit, the Sum of 10l. in and about the healing and curing of the Wounds, Bruises, Illness, and Disorders occasioned by such Assault of the said Thomas, as aforefaid, to wit, at the Parish aforefaid, in the County aforefaid. And also, for that the said Thomas afterwards, to wit, on the same Day and Year aforefaid, at the said Parish of St. Giles in the Fields aforefaid, in the County of Middlesex aforefaid, made another Assault upon the said Robert, and then and there again beat, bruised, wounded, and ill treated him, insomuch that his Life was thereby again greatly despaired, and other Injuries to the said Robert, then and there did against the Peace of our said Lord

Declaration on an Assault, and for the Expenses of curing the Defendant of the Wounds received thereby.

Count for an Assault and Battery only.

Lord the King, and to the Damage of the said Robert of 100 l. and therefore he brings Suit, &c.

C H A P. XXVI.

Of amending the Declaration.

A Declaration may be amended in Matter of Form, after the General Issue pleaded, and before Entry, without paying Costs, or giving an Imparance, but if amended in Substance, the Plaintiff must pay Costs, or give an Imparance at his Option; and if Amendment be in Substance after a Special Plea pleaded, the Plaintiff must pay Costs, tho' he had rather give an Imparance.

In all Cases of Amendment, after Plea, the Defendant has Liberty to plead *de novo*, and has two Days for that Purpose, after the Amendment made and Payment of Costs.

If a Rule to plead be entered the same Term, the Amendment is made, tho' before such Amendment it is sufficient, otherwise a new Rule to plead must be entered; the Plaintiff after Plea pleaded, or after the End of the second Term, shall not add a new Count to his Declaration, under Pretence of amending same.

A Bill on the File may be amended at any Time before Plea, during the Term of which it is filed, but not afterwards without leave of the Court.

The Application to amend, is usually made by Summons before one of the Judges.

C H A P. XXVII.

Of changing the Venue.

ACTIONS upon the Case, Trespafs for Goods, Assault or Imprisonment, and other transitory Actions, except Scandalum Magnatum, Escape, Deceit, on a false Return, against a Carrier or Lighterman, on the Statute of Usury, Covenant, and it is said on a Note, are to be laid in their proper Counties, or on Motion made before the Rules for pleading are out, and Affidavit that the Cause of Action arose in the County of ———, and not in the County of ———, (*where the Action is laid*) or elsewhere, the Court will change the Venue. Mich. 1654. Sec. 5.

But if Evidence necessary to support the Action arises in two Counties, the Venue may be laid in either, or if the Plaintiff will be bound, to give some material Evidence in the County where the Action is laid, the Court will not change the Venue.

If a Barrister, Attorney, or Officer of the Court be Plaintiff, and the Action be laid in Middlesex, the Court will not change the Venue; and if any such Person be a Defendant, and sued in any other County, the Court will on Motion, alter the Venue to Middlesex, but where they sue, or are sued in *Auter Droit*, as Executors, &c. or jointly with other Persons, they then lose their Privilege.

After the Essoign Day of the subsequent Term, from the Appearance, the Plaintiff shall not alter his Venue, though he would pay Costs, or give an Imparlange.

Plaintiff

The Practising Attorney :

Plaintiff cannot regularly move to change the Venue, but may do it in Effect by moving to amend. Strange 858.

In the King's Bench.

Between { Robert Franks, Plaintiff,
and
Thomas Parker, Defendant.

Affidavit to
change the Ve-
nue.

Thomas Parker, of, &c. the Defendant, in this Cause maketh Oath, that the Cause of Action mentioned in the Declaration in this Cause (if any such there be) did arise in the County of Hertford, and not in the County of Middlesex, or elsewhere, out of the said County of Hertford.

Sworn, &c.

Thomas Parker.

No Notice of Motion to change the Venue need be given, but you serve the Plaintiff's Attorney with a Copy of the Rule, and it is usual to deliver him the Plea at the same time; and he will alter the Venue in the Issue.

If the Plaintiff moves to discharge the Rule, for changing the Venue on the usual Undertaking, this Motion must be made before Replication, and his Undertaking is made a Part of, and the Condition on which the Court grants the Rule.

C H A P. XXVIII.

Imparlanee.

IN the Table, Page (64) it hath been shewn in what Cases a Defendant is at this Day intitled to an Imparlanee, what an Imparlanee is, and wherefore allowed, cannot better be known, than by a Transcript from Blackstone's Commentaries.

If the Suit is commenced by Bill of Middlesex or Latitat, without any special Original, after Defence made, and before the Defendant puts in his Plea, he is intitled to demand one Imparlance or *Licentia loquendi*, and may before he pleads have more granted by consent of the Court to see if he can end the Matter amicably without further Suit, by talking with the Plaintiff; a Practice which is supposed to have arisen from a Principle of Religion in obedience to that Precept of the Gospel, "Agree with thine Adversary quickly, whilst thou art in the way." And it may be observed, that this Gospel Precept has a plain Reference to the Roman Law of the twelve Tables, which expressly directed the Plaintiff and Defendant to make up the Matter whilst they were in the way or going to the Prætor, *in via rem uti pecunt orato*.

C H A P. XXIX.

O Y E R.

PREVIOUS to the Defendant's putting in his Plea, he may crave Oyer of the Writ or of the Bond or other Specialty, upon which the Action is brought, that is, to hear it read to him; the generality of Defendants, in the Times of ancient Simplicity, being supposed incapable to read themselves, yet though the Word in itself may import nothing more than the hearing of the Writ, &c. read, the party demanding Oyer, is also intitled, if demanded, to a Copy thereof, and to see the Original, and examine that such Copy be correct and perfect, for in Defence, Advantage may be taken of any Condition, or other Part not stated in the Pleadings of the Cause.

A Demand of Oyer must be upon that Party's Attorney who makes the Profert, or is possessed of the Writ or Instrument of which Oyer is required, by delivering a Demand suited to the Nature of the Case in the following Form.

M

Franks

The Practising Attorney:

Franks v. Parker.

The Defendant demands Oyer, and a Copy of the Writing Obligatory, mentioned in the Declaration in this Cause, and the Condition thereof thereunder written.

Yours, &c.

To Mr A. B. } C. D. Deft's Atty,
Plaintiff's Attorney.

And Oyer is given by delivering a Copy upon treble penny stamped Paper, charged for at the Rate of 4d. per Sheet, besides Stamps (it being considered as a Part of the Pleading wherein the Profert is made,) and at the same time producing the Original for the Purpose of examining such Copy. The Defendant is allowed the same Time to plead after Oyer given, as he had when Demand made. Oyer should be demanded before the Time for pleading is out, or the Plaintiff may refuse to give same.

C H A P. XXX.

Of Pleading in general.

WHEN the Plaintiff has stated his Case in the Declaration, it is incumbent on the Defendant within a reasonable Time to make his *Defence* and put in a *Plea*, or the Plaintiff will at once recover Judgment by *Default* or *nil Dicit*, against the Defendant.

Defence in its true legal Sense, signifies not a Justification, Protestation or Guard, which is now its popular signification; but merely an opposing or denial (from the french Verb. *Defender*) of the Truth or Validity of the Complaint, a general Assertion that the Plaintiff has no Ground of Action, which

which Assertion is afterwards maintained in his Plea, for it would be ridiculous to suppose that the Defendant defends the Force and Injury in one Line, and pleads that he is not guilty of the Trespass complained of in the next. The Courts were formerly very nice and curious with respect to the Nature of the Defence, so that if no Defence was made, though a sufficient Plea was pleaded, the Plaintiff should recover Judgment; for a general Defence or Denial was not prudent in every Situation, since thereby the Propriety of the Writ, the Competency of the Plaintiff, and the Cognizance of the Court were allowed. By defending *Force and Injury* the Defendant waived all Pleas of Misnomer, by defending the *Damages* all Exception to the Person of the Plaintiff, and by defending either one or other *when and where* it should behove him, he acknowledged the Jurisdiction of the Court: But of late Years these Niceties have been very deservedly discountenanced, though they seem still to be law if insisted on.

Pleas are of two Sorts, *dilatory* Pleas, and Pleas to the Action; dilatory Pleas are such as tend merely to delay or put off the Suit by questioning the Propriety of the Remedy, rather than by denying the Injury: Pleas to the Action are such as dispute the very Cause of Suit; the former cannot be pleaded after a general Imparance, which is an Acknowledgment of the Propriety of the Action.

I. Dilatory Pleas are, I. To the Jurisdiction of the Court, alledging that it ought not to hold plea of this Injury, it arising in Wales or beyond Sea. II. To the Disability of the Plaintiff, by reason whereof he is incapable to commence or continue the Suit, as that he is an alien Enemy, outlawed, excommunicated, attainted of Treason or Felony, under a Præmunire, not in Rerum Natura (being only a fictitious Person) an Infant, a Feme Covert, or a Monk professed. III. In *Abatement*, which Abatement is either to the Writ, or the Count for some Defect in one of them, as for misnaming the

The Practising Attorney :

Defendant, which is called a *Misnomer*, giving him a wrong Addition, as Esquire, instead of Knight, or other want of Form in any material Respect ; or it may be that the Plaintiff is dead, for the Death of either Party is at once an Abatement of the Suit. And in Actions merely personal arising *ex Delicto*, for Wrongs actually done or committed by the Defendant, as Trespass, Battery and Slander ; the Rule is, that *Actio personalis moritur cum Persona* ; and it never shall revive either by or against the Executors or other Representatives ; for neither the Executors of the Plaintiff have received, nor those of the Defendant have committed in their own personal Capacity any Manner of Wrong or Injury ; but in Actions arising *ex Contractu*, by breach of Promise, and the like where the Right descends to the Representatives of the Plaintiff, and those of the Defendant have Assets to answer the Demand, though the Suit shall abate by the Death of the Party, yet they may be revived against or by the Executors being indeed rather Actions against the Property, than the Person in which the Executors have now the same Interest that their Testator had before.

These Pleas to the Jurisdiction to the Disability or in Abatement, were formerly very often used as mere dilatory Pleas without any Foundation of Truth, and calculated only for delay ; but now by Stat. 4 and 5 Ann. c. 16, no dilatory Plea is to be admitted without Affidavit made of the Truth thereof, or some probable Matter shewn to the Court to induce them to believe it true. And with respect to Pleas themselves, it is a Rule that no Exception shall be admitted against a Declaration or Writ, unless the Defendant shall in the same Plea give the Plaintiff a better ; that is, shew him how it might be amended, that there may not be two Objections on the same account.

All Pleas to the Jurisdiction conclude to the Cognizance of the Court, praying " Judgment whether the Court will have further Cognizance of

of the Suit;" Pleas to the Disability conclude to the Person by praying " Judgment if the said A. the Plaintiff ought to be answered," and Pleas in Abatement (when the Suit is by Original) conclude to the Writ or Declaration, by praying " Judgment of the Writ or Declaration, and that the same may be qualshed," *cessetur*, made void or abated; but if the Action be by Bill, the Plea must pray " Judgment of the Bill," and not of the Declaration, the Bill being here the Original, and the Declaration only a Copy of the Bill.

When these dilatory Pleas are allowed, the Cause is either dismissed from that Jurisdiction, or the Plaintiff is stayed till his Disability be removed, or he is obliged to sue out a new Writ by leave obtained from the Court, or to amend and new frame his Declaration; but when on the other hand they are over-ruled as frivolous, the Defendant has Judgment of *respondeas ouster*, or to *answer over* in some better manner, it is then incumbent on him to plead.

2. A Plea to the Action, that is, to answer to the Merits of the Complaint, this is done by confessing or denying it.

A Confession of the whole Complaint is not very usual, for then the Defendant will probably end the Matter sooner, or not plead at all, but suffer Judgment to go by Default; yet sometimes after Tender, and Refusal of a Debt, if the Creditor harasses his Debtor with an Action, it then becomes necessary for the Defendant to acknowledge the Debt and plead the Tender, adding that he has always been ready *tout temps prêt*, and still is ready, *uncore prêt* to discharge it, for a Tender by the Debtor, and Refusal by the Creditor, will in all Cases discharge the Costs, but not the Debt itself; though in some particular Cases the Creditor will totally lose his Money; but frequently the Defendant confesses one Part of the Complaint (by a *Cognovit Actionem* in respect thereof) and traverses or denies the rest in order to avoid the Expence of carrying that Part to a formal Trial, which

The Practising Attorney:

which he has no ground to litigate. A Species of this Sort of Confession is the *Payment of Money into Court*, which is for the most part necessary upon pleading a Tender, and is itself a kind of Tender to the Plaintiff by paying into the Hands of the proper Officer of the Court, as much as the Defendant acknowledges to be due, together with the Costs hitherto incurred, in order to prevent the Expence of any farther Proceedings. This may be done upon what is called a Motion, which is an occasional Application to the Court by the Parties or their Council, in order to obtain some Rule or Order of Court, which becomes necessary in the Process of a Cause, and is usually grounded upon an Affidavit (the perfect Tense of the Verb *Affido*) being a voluntary Oath before some Judge or Officer of the Court, to evince the Truth of certain Facts upon which the Motion is grounded, though no such Affidavit is necessary for Payment of Money into Court. If after the Money paid in, the Plaintiff proceeds in his Suit, it is at his own Peril, for if he does not prove more due than is so paid into Court, he shall be nonsuited, and pay the Defendant's Costs, but he shall still have the Money so paid in, for that the Defendant has acknowledged to be his due.

To this Head may also be referred the Practice of what is called a *set off*, whereby the Defendant acknowledges the Justice of the Plaintiff's Demand on one Hand, but on the other, sets up a Demand of his own to counterbalance that of the Plaintiff, either in the whole or in part, as if the Plaintiff sues for 10l. due on a Note of Hand, the Defendant may set off 9l. due to himself for Merchandize, sold to the Plaintiff, and in case he pleads such set off, must pay the remaining Ballance into Court; this depends upon the Statute of 2 George 2. c. 22, and 8 George 2. c. 24, which enacts, that where there are mutual Debts between the Plaintiff and Defendant, one Debt may be set against the other and either pleaded in bar, or given in Evidence upon the general Issue at the Trial, which shall operate

operate as Payment, and extinguish so much of the Plaintiff's Demand.

Pleas that totally deny the Cause of Complaint, are either the General Issue, or a Special Plea in Bar.

1. The General Issue or General Plea, is what traverses, thwarts and denies at once the whole Declaration, without offering any special Matter whereby to evade it. As in Trespass, *Vi et Armis*, or on the Case *non culpabilis*, not guilty; in Debt upon contract, *nil debet*, he owes nothing in Debt; on Bond, *non est factum*, it is not his Deed; on an *Assumpsit*, *non Assumpsit*, he made no such Promise; these Pleas are called the General Issue, because by importing an absolute and general Denial of what is alledged in the Declaration, they amount at once to an Issue, by which we mean a Fact affirmed on one side, and denied on the other.

Formerly the General Issue was seldom pleaded, except when the Party meant wholly to deny the charge alledged against him; but when he meant to distinguish away or palliate the charge, it was always usual to set forth the particular Facts in what is called a Special Plea, which was originally intended to apprise the Court and the adverse Party, of the Nature and Circumstances of the Defence, and to keep the Law and Fact distinct. And it is an invariable Rule, that every Defence which cannot be thus specially pleaded, may be given in Evidence upon the General Issue at the Trial; but the Science of Special Pleading having been frequently perverted to the Purposes of Chicane and Delay; the Courts have of late in some Instances, and the Legislature in many more, permitted the General Issue to be pleaded, which leaves every thing open, the Fact, the Law, and the Equity of the Case, and have allowed Special Matter to be given in Evidence at the Trial. And though it should seem as if much Confusion and Uncertainty would follow from so great a Relaxation of the Strictness anciently observed, yet Experience has shewn it to be otherwise, especially with

The Practising Attorney:

with the Aid of a new Trial in case either Party be unfairly surprized by the other.

2. Special Pleas in *bar* of the Plaintiff's Demand are very various, according to the Circumstances of the Defendant's Case, as an Accord, Arbitration, Conditions performed, Non-age of the Defendant, or some other Fact which precludes the Plaintiff from his Action. A *Justification* is likewise a Special Plea in Bar, as in Actions of Assault and Battery, *Son assault Demefne*, that it was the Plaintiff's own original Assault; in Trespafs, that the Defendant did the Thing complained of in right of some Office, which warranted him so to do, or in an Action of Slander, that the Plaintiff is really as bad a Man as the Defendant said he was.

Also a Man may plead the Statutes of Limitations in bar, or the Time limited, by certain Acts of Parliament, beyond which no Person can lay his Cause of Action; this by the Stat. 21, Jac. 1. c. 16, is *twenty Years* in any Writ of Formedon, and by a Consequence, *twenty Years* is also the Limitation of every Action of Ejectment, for no Ejectment can be brought unless where the Lessor of the Plaintiff is intitled to enter on the Lands, and by Stat. 21, Jac. 1. c. 16, no Entry can be made by any Man unless within *twenty Years* after his Right shall accrue. As to all Personal Actions they are limited by the same Statute to *six Years* after the Cause of Action commenced, except Actions of Assault, Battery, Mayhem and Imprisonment, which must be brought within *four Years*; and Actions for Words, must be brought within *two Years* after the Injury committed. And by Stat. 31, Eliz. c. 5, all Suits, Indictments and Informations, upon any penal Statute where any Forfeiture is to the Crown, shall be sued within *two Years*, and where the Forfeiture is to a Subject within *one Year* after the Offence committed, unless where any other Time is specially limited by the Statute. Lastly, by Statute 10 Will. 3. C. 14. no Writs of Error, Scire Facias or other Writ, shall

be brought to reverse any Judgment for error, unless it be prosecuted within twenty Years. The use of these Statutes of Limitations, is to preserve the Peace of the Kingdom, and to prevent those innumerable Perjuries which might ensue if a Man were allowed to bring an Action for any Injury committed at any Distance of Time, upon both these Accounts the Law therefore holds that *Interest Reipublice ut sit Finis litium*. If therefore in any Suit the Injury or Cause of Action happened earlier than the Period expressly limited by Law, the Defendant may plead the Statutes of Limitations in Bar, and upon an *Assumpsit* or Promise to pay Money to the Plaintiff, the Defendant may plead *non assumpsit infra sex Annos*, he made no such Promise within six Years, which is an effectual Bar to the Complaint.

An *Estoppel* is likewise a Special Plea in bar, which happens where a Man hath done some Act, or executed some Deed, which estops or precludes him from avering any thing to the contrary, as if Tenant for Years (who hath no Freehold) levies a Fine to another Person, though this is void as to Stranger, yet it shall work as an Estoppel to the Cognizor, for if he afterwards brings an Action to recover these Lands, and his Fine is pleaded against him, he shall thereby be estopped from saying, that he had no Freehold at the Time, and therefore was incapable of levying it.

The Conditions and Qualities of a Plea (which as well as the Doctrine of Estoppels, will also hold equally mutatis mutandis, with regard to other Parts of Pleadings) are, 1. That it be single, and containing only one Matter, for Duplicity begets Confusion; but by Stat. 4 and 5, An. c. 16, a Man Leave of the Court may plead two or more distinct Matters or single Pleas, as in an Action of Assault and Battery, these three not guilty, *Non Assault Demesne*, and the Statute of Limitations, 2. That it be direct and positive, and not argumentative. 3. That it have convenient certainty

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of

The Practising Attorney:

of Time, Place and Persons. 4. That it answer the Plaintiff's Allegations in every material Point. 5. That it be so pleaded as to be capable of Trial.

Special Pleas are usually in the affirmative, sometimes in the negative; but they always advance some new Fact not mentioned in the Declaration, and then they must be averred to be true in the common Form,—“and this he is ready to verify.” This is not necessary in Pleas of the General Issue, those always containing a total Denial of the Fact before advanced by the other Party, and therefore putting him on the Proof of them.

It is a Rule in Pleading, that no Man be allowed to plead specially, such a Plea as amounts only to the General Issue, or a total Denial of the Charge; but in such a Case he shall be driven to plead the General Issue in Terms whereby the whole Question is referred to a Jury, but if the Defendant in an Action of Trespass be desirous to refer the validity of his Title to the Court rather than the Jury, he may state his Title specially, and at the same Time give colour to the Plaintiff, or suppose him to have an Appearance or colour of Title bad indeed in Point of Law, but of which the Jury are not competent Judges. As if his own Title be that he claims by Feoffment, with Livery from A, by force of which he entered on the Lands in Question, he cannot plead this by itself, as it amounts to no more than *not guilty*. But he may alledge this specially, provided he goes farther, and says that the Plaintiff claiming by colour of a prior Deed of Feoffment without Livery, entered upon whom he entered, and may then refer himself to the Judgment of the Court, which of these two Titles is the best in point of Law.

When the Plea of the Defendant is thus put in, if it does not amount to an Issue or total Contradiction of the Declaration, but only evades it, the Plaintiff may plead again and *reply* to the Defendant's Plea, either traversing it, that is, totally denying

nying it, as if on an Action of Debt upon Bond, the Defendant pleads *solvit ad Diem*, that he paid the Money when due; here the Plaintiff in his Replication may totally traverse this Plea, by denying that the Defendant paid it, or he may alledge new Matter, in Contradiction to the Plaintiff's Plea, as when the Defendant pleads no Award made, the Plaintiff may reply and set forth an Award made, and assign a Breach, or the Replication may confess and avoid the Plea by some new Matter or Distinction, consistent with the Plaintiff's former Declaration, as in an Action for trespassing upon Land, whereof the Plaintiff is seized, if the Defendant shews a Title to the Land by descent, and that therefore he had a right to enter and gives colour to the Plaintiff, the Plaintiff may either traverse and totally deny the Descent, or he may confess and avoid it by replying, that true it is that such Descent happened, but that since the Descent, the Defendant himself demised the Lands to the Plaintiff for Term of Life, to the Replication the Defendant may *rejoin* or put in an Answer, called a Rejoinder; the Plaintiff may answer the Rejoinder, by a Sur-rejoinder, upon which the Defendant may *rebut*, and the Plaintiff may answer him by a Surrebutter.

The whole of this Process is denominated the *Pleading*, in the several Stages of which it must be carefully observed not to depart or vary from the Title or Defence, which the Party has once insisted on, for this (which is called a *Departure* in Pleading) might occasion endless Altercation, therefore the Replication must support the Declaration, and the Rejoinder must support the Plea, without departing out of it; as in the Case of Pleading, no Award made in Consequence of a Bond of Arbitration, to which the Plaintiff replies, setting forth an actual Award, now the Defendant cannot rejoin that he hath performed this Award, for such Rejoinder would be an entire Departure from his original Plea, which alledged that no such Award was made, therefore he

The Practising Attorney:

has now no other Choice but to traverse the Fact of the Replication, or else to demur upon the Law of it.

Yet in many Actions the Plaintiff who has alledged in his Declaration, a general Wrong, may in his Replication, after an evasive Plea by the Defendant, reduce that general Wrong to a more particular Certainty, by assigning the Injury afresh with all its specific Circumstances, in such Manner, as clearly to ascertain and Identify it, consistently with his general Complaint, which is called a new or novel Assignment. As if the Plaintiff in Trespass declares on a Breach of his Close in D. and the Defendant Pleads that the Place where the Injury is said to have happened, is a certain Close of Pasture in D. which descended to him from B. his Father, and so is his own Freehold, the Plaintiff may reply and assign another Close in D. specifying the Abuttals and Boundaries as the real Place of the Injury.

It hath previously been observed, that Duplicity in Pleading must be avoided, every Plea must be simple, entire, connected, and confined to one single Point; it must never be entangled with a variety of distinct, dependent Answers to the same Matter, which must require as many different Replies, and introduce a Multitude of Issues upon one and the same Dispute, for this would often embarrass the Jury and sometimes the Court itself, and at all Events would greatly enhance the Expence of the Parties; yet it frequently is expedient to plead in such a manner as to avoid any implied Admission of a Fact which cannot with Propriety or Safety be positively affirmed or denied; and this may be done by what is called a Protestation, whereby the Party interposes an oblique Allegation, or Denial of some Fact, protesting (by the gerund *protestando*) that such a Matter does or does not exist and at the same Time avoiding a direct Denial; the use of it is

to save the Party from being concluded with respect to some Fact or Circumstance, which cannot be directly affirmed or denied without falling into Duplicity of Pleading, and which yet, if he did not thus enter his Protest he might be deemed tacitly to have waived or admitted. Thus while Tenure in Villenage subsisted, if a Villain had brought an Action against his Lord, and the Lord was inclined to try the Merits of the Demand, and at the same time to prevent any Conclusion against himself, that he had waived his Signiory, he could not in this Case both plead affirmatively that the Plaintiff was his Villain, and also take Issue upon the Demand, for then the Plea would have been double as the former alone would have been a good Bar to the Action: but he might have alledged the Villenage of the Plaintiff, by way of Protestation, and then have denied the Demand. By this Means the future Villenage of the Plaintiff was saved to the Defendant, in case the Issue was found in his (the Defendant's) Favour, for the Protestation prevented that Conclusion, which would otherwise have resulted from the rest of his Defence, that he had enfranchised the Plaintiff, since no Villain could maintain an Action against his Lord. So also if a Defendant, by way of Inducement to the Point of his Defence, alledges (amongst other Matters) a particular Mode of Seizen or Tenure, which the Plaintiff is unwilling to admit, and yet desires to take Issue on the principal Point of the Defence, he must deny the Seizen or Tenure, by way of Protestation, and then traverse the defensive Matter. So lastly, If an Award be set forth by the Plaintiff, and he can assign a Breach in one Part of it, (viz. the Non-payment of a Sum of Money) and yet is afraid to admit the Performance of the rest of the Award, or to aver in general a Non-performance of any Part of it, lest something should appear to have been performed, he may save to himself any Advantage he might hereafter make of the general Non-performance, by alledging, *that by Protestation*

The Drafting Attorney:

tion, and plead only the Non-payment of the Money.

In any Stage of the Pleadings, when either Side advances, or affirms any new Matter, he usually (as was said) avers it to be true, "and this he is ready to verify." On the other Hand, when either Party traverses or denies the Facts pleaded by his Antagonist, he usually tenders an Issue, as it is called, the Language of which is different, according to the Party, by whom the Issue is tendered; for if the Traverse or Denial comes from the Defendant, the Issue is tendered in this Manner: "And of this he puts himself upon the Country," thereby submitting himself to the Judgment of his Peers; but if the Traverse lies upon the Plaintiff, he tenders the Issue, or prays the Judgment of the Peers against the Defendant, in another Form thus: "And this he prays may be enquired of by the Country." But if either Side (as for instance, the Defendant) pleads a special negative Plea, not traversing or denying any thing that was before alledged, but disclosing some new negative Matter, as where the Suit is on a Bond, conditioned to perform an Award, and the Defendant pleads negatively, that no Award was made, he tenders no Issue upon this Plea, for it does not yet appear, whether the Fact will be disputed, the Plaintiff not having yet asserted the Existence of any Award; but when the Plaintiff replies, and sets forth, an actual specific Award, if then the Defendant traverses the Replication, and denies the making of any such Award, he then, and not before, tenders an Issue to the Plaintiff; for when in the Course of pleading, they come to a Point, which is affirmed on one Side and denied on the other, they are then said to be at Issue, all their Debates being at last contracted into a single Point, which must now be determined either in favour of the Plaintiff, or of the Defendant, *Blas. Com. Vol. III.*

C H A P. XXXI.

Of the Rule to plead and demanding Plea.

BEFORE a Plea can be compelled, or a Plaintiff become intitled to Judgment for want of it, a Rule to plead must be entered with the Clerk of the Rules, which expires in four Days, and (if the Defendant has appeared) a Demand of a Plea made upon the Attorney, entering such Appearance. The Rule is given, by delivering a Slip of Paper, with the Title of the Cause, in the following Form.

6th Nov. 1777.	Morgan	} Rule to plead.
	against	
A. B.	Meredith.	

In general, a fresh Rule must be entered, if the Defendant do not plead before the subsequent Term, to that wherein the former Rule was given to warrant a Judgment, or intitle the Plaintiff to a Plea of such subsequent Term; but where under a Rule of Court, a Defendant gains time, it becomes unnecessary to give a second Rule, the Order of Court being sufficient for that Purpose, nor need a Plaintiff in that Case demand a Plea, though not before done, the Rule sufficing for all these Purposes.

If the Defendant has appeared, as is said above, a Demand of a Plea must be made in writing, upon the Attorney entering the Appearance, or filing common Bail, this Demand may be given at the Time of delivering the Declaration, but must be on a distinct Piece of Paper, and not indorsed on the Declaration.

Williams

The Praising Attorney:

Williams, v. Morgan.

The Plaintiff demands Plea in this Cause of Judgment.

To Mr. C. D. Defendant's Attorney.	}	Your's, &c. A. B. Plaintiff's Attorney.
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If the Demand be delivered after the Time for pleading is out, the Defendant has only till the Morrow Afternoon to plead.

C H A P. XXXII.

Of delivering and entering the general Issue.

IF your Plea be the General Issue, you ingross it on treble Penny stamped Paper, and deliver it to the Plaintiff's Attorney, or it may be entered in the General Issue Book, kept by the Clerk of the Judgments in the King's Bench Office, thus :

Morgan ats Williams.	}	The Defendant pleads the General Issue, <i>non est factum</i> , (or according to the Nature of the Action) by
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C. D. his Attorney.

You pay the Clerk 4*d.* for the Entry, and he will date your Plea, when ingrossed on Stamp to deliver, it must not be contracted, but fairly written out, according to the following Precedents.

Non

Non est factum to a Bond.

Michaelmas Term, 18th George III.

Morgan } And the said John, by C. D. his At-
ats } torney, comes and defends the Force and
Williams. } Injury, when, &c. and says, that he
ought not to be charged with the said Debt,
by Means of the said Writing Obligatory,
because he says, that the said Writing Obliga-
tory is not his Deed, and of this he puts
himself upon the Country.

Non est factum by an Heir, Executor, or Admini-
strator.

—And says, that he ought not to be charged
with the said Debt, by Virtue of the said Writing,
because he says, that the said Writing is not the
Deed of the said William Edwards, (the Testator)
and of this he puts himself upon the Country.

Nil debet.

—And says, that he does not owe to the said
Thomas the aforesaid 50*l.* or any Part thereof, in
Manner and Form, as the said Thomas above com-
plains against him, and of this he puts himself upon
the Country.

Nil debet to a *qui tam* Action.

—And says, that he does not owe to our said
Lord the King, and the said Andrew who sues as
aforesaid, the said 20*50l.* or any Part thereof, in
Manner and Form, as the said Andrew, who sues
as aforesaid, above complains against him, and of
this he puts himself upon the Country.

O

Non

Non detinet in Debt.

—And says, that he does not detain from the said Samuel, the said 200*l.* or any Part thereof, in Manner and Form, as the said Samuel above complains against him, and of this he puts himself upon the Country.

Non detinet in Case.

—And says, that he does not detain from the said Edward, the said Goods and Chattels in the said Declaration specified, or any Part thereof, in Manner and Form, as the said Timothy above complains against him, and of this he puts himself upon the Country.

Nil debet nec detinet.

—And says, that he doth not owe to the said Edward the aforesaid 20*l.* or any Part thereof, in Manner and Form, as the said Edward hath above declared against him, nor doth he detain from the aforesaid Edward the Horse aforesaid, in Manner and Form, as the said Edward hath above complained against him, and of this he puts himself upon the Country.

Non infregit conventionem.

—And says, that he did not break the said Covenant, (or Covenants, or any one of them) in the said Declaration above specified, in Manner and Form, as the said John thereof complains against him, and of this he puts himself upon the Country.

Non assumpsit.

—And says, that he did not undertake and promise

promise in Manner and Form, as the said Evan above complains against him, and of this he puts himself upon the Country.

Non assumpsit by Executors or Administrators,

—And says, that the said George, (the Testator) in his life-time, did not undertake, in Manner and Form, as the said Henry above complains against them, and of this they put themselves upon their Country.

Non culpabilis, in Case.

—And says, that he is not guilty of the Premises above laid to his Charge, in Manner and Form, as the said William above complains against him, and of this he puts himself upon the Country.

Non culpabilis, in Trespafs.

—And says, that he is not guilty of the Trespafs above laid to his Charge, in Manner and Form, as the said Miles above complains against him, and of this he puts himself upon the Country.

Non culpabilis, in Trespafs and Assault

—And says, that he is not guilty of the Trespafs and Assault above laid to his Charge, in Manner and Form, as the said Miles hath above complained against him, and of this he puts himself upon the Country.

The common Repetition to these Pleas, is the Similitur, and the said (Plaintiff) doth the like, that is, doth likewise put himself upon the Country, whereupon Issue is joined between the Parties.

The Attorney may make up the Issue and Demurrer Books in the following Cases, viz. every Issue

due that may be given on the Book-side. (Vide page 59.) Not Guilty to a new Assignment, the Bar of Son, *Frank Tenement*, *Comperuit ad Diem*, to a Sheriff's Bond, *Nul tiel Record*, to an Action of Debt on a Judgment, a general Demurrer to a Declaration, in Covenant where the Defendant in his Bar concludes *ad patriam*, every special *non est factum*, every *Son Assault Demesne*, and likewise all Issues and Demurrers, upon Writs of Error *Scire facias*, and *Audita querela*, and all Repleaders and other Things formerly entered of Record. In all other Cases both by Bill and Original, the special Pleadings are to be left with the Clerk of the Papers, who makes Copies thereof, and when Issue is joined the Paper-Book is made up by him.

C H A P. XXXIII.

Of filing special Pleas, and making up the Paper-Book.

WHEN your Plea is Special it must be ingrossed on treble-penny-stamped Paper, signed by Council, and filed with the Clerk of the Papers, of whom the Plaintiff's Attorney bespeaks a Copy, in order to draw his Replication thereto, unless such Replication be of course, and consists in a mere Traverse or Denial of the Plea, without alledging any new Matter therein, as *Nul tiel Record* to a Plea of Judgment recovered, in which Cases the Clerk of the Papers himself draws the Replication, and delivers the Paper Book to the Plaintiff's Attorney, with a complete Issue. But when the Replication is also special, and must be signed by Council, (which is necessary when new Matter is alledged therein) as if a Defendant plead a general Release, and the Plaintiff reply that such Release was obtained *per minas*, in such Case your Replication

tion being drawn, signed by Council and ingrossed, must also be filed with the Clerk of the Papers, and if a Rejoinder, or other further Pleadings be had in the Cause, the Parties alternately take Copies of the other's Pleadings, and file their Answer thereto, until Issue is joined between them, when the Clerk of the Papers having a Copy of the Declaration made for him by the Plaintiff's Attorney, makes up and delivers him the Paper Book, with a Rule in the Margin thereof, ordering that the Defendant receive that Book and return the same to be inrolled within the Time thereby given; the Plaintiff's Attorney pays 8d. *per* Sheet for the whole Book, and 4d. *per* Sheet for all Pleadings subsequent to the Declaration besides Stamps; this done, if the Parties in their Pleading have put themselves upon the Country, the Plaintiff's Attorney indorses a Notice of Trial on the Paper Book, and delivers it over to the Defendant's Attorney, who must return it to be inrolled, according to the Rule given in the Margin by the Clerk of the Papers, which if he fail to do and to pay 8d. *per* Sheet for the Pleadings on his Part, viz. Plea, Rejoinder, &c. and 4d. *per* Sheet for the Plaintiff's Entries, viz. Replication, Surrejoinder, &c. Judgment may be signed, and the Plaintiff need not accept the Book, tho' tendered afterwards.

Neither the Declaration (unless not before paid for) Stamps or other Part of the Book are paid for by the Defendant, on returning the Paper Book.

Note, The Copies of the Pleadings made for the Plaintiff, will, on being taken back, be made Part of the Paper Book, and allowed for accordingly.

If the Paper Book be made up and delivered in Term, or within eight Days after, the Defendant's Attorney must return it in four Days; and if the Venue be laid in any other County than London or Middlesex, it must also be returned in four Days,
not-

The Practising Attorney :

notwithstanding the Time of Delivery. But if the Venue be laid in London or Middlesex, and the Paper Book be not delivered till eight Days, exclusive after the End of the Term, the Defendant has to the fourth Day of the next Term, to return the same, for it being too late then to give Notice of Trial for the Sittings after Term, it is not fit the Defendant's Attorney should be hurried without Occasion in returning of the Paper Book, but it is otherwise in the Country Causes, where notice of Trial may be given for the Assizes.

If the Paper-Book be of an Issue, in fact, these Times are reckoned exclusive of the Day of Delivery, if of a Demurrer or Issue in Law inclusive.

The Clerk of the Papers is not to receive any special Pleas or Demurrers, unless signed by Counsel; and in the Copies of Pleas and Paper Book, to set down the Counsel's Name, signing the same E. 18. Car. 2. It is usual to get the Draft signed and Copy, the Signiture at the Foot of the Plea, ingrossed and filed.

The Defendant may on returning the Paper Book, waive his special Plea, and give the general Issue, in which Case the Notice of Trial given on the special Issue shall serve for notice on the general Issue.

If the Defendant means to delay the Plaintiff in his Suit, and prevent the Expence of a Trial (having pleaded specially) when the Paper Book is delivered to him, he scratches out the Rejoinder, and leaves a Demurrer to the Plaintiff's Replication in the Office, and when due, returns the Paper Book with the following Notice indorsed.

Mr. A. B.

I have struck out the Rejoinder and left a Demurrer to the Plaintiff's Replication in the Office.

Your's, &c.

C. D. Defendant's Attorney.

Where-

Whereupon the Plaintiff's Attorney must take the Paper Book to the Clerk of the Papers, who will make up the Demurrer Book, by adding the Demurrer filed by the Defendant, and a Joinder in Demurrer, &c. thereto, which the Plaintiff's Attorney again delivers over to the Defendants, who must return it to be inrolled in one Day, and pay for the Entries, as before-mentioned, upon returning which, he may scratch out all the special Pleading, and give the general Issue. But to prevent a Delay of this Kind, if the Defendant plead a dilatory or frivolous Plea, the Court upon Motion, will order that he stand by his Plea, or plead some other peremptorily on the Morrow, which shall not afterwards be waived, and towards the End of the Term (otherwise there might not be sufficient time to give Notice of Trial) the Court will require the Defendant, if he do not abide by his Plea, to plead another instantly; yet after this, or when the Defendant, is bound to plead an issuable Plea, he may demur to the Plaintiff's Replication.

Pleading issuably within the meaning of a Judge's Order, is pleading such an Issue as the Plaintiff may go to trial upon.

If a Judgment or Matter of Record in the *same* Court be pleaded, the Term and Number Roll must be given if demanded, or the Plea is not to be received.

If the Defendant plead an Issuable Plea, and Plaintiff do not enter the Issue the same Term, the Defendant may waive same, and plead anew, or demur within the first four Days of the subsequent Term, but he cannot waive the general Issue.

No dilatory Plea shall be received, unless the Party offering such Plea by Affidavit, prove the Truth thereof, or shew some probable Matter to the Court, to induce them to believe, that the Fact of such dilatory Plea is true. Stat. 4 & 5 Annæ c. 16. §. 11.

Affidavit of the
Truth of a Dis-
tory Plea.

In King's Bench.

Between } Robert Franks, Plaintiff.
and }
Thomas Parker, Defendant.

Thomas Parker of, &c. the Defendant in this Cause, maketh Oath, that the Substance and Matter of Fact in the Plea hereto annexed is true.

Thomas Parker.

Sworn, &c.

In case you plead several distinct Matters, a Rule for that Purpose must be drawn up and served on the Plaintiff's Attorney, when the Plea is filed, to obtain which, get a Counsel's Hand to a Motion Paper, and leave the same, and the Draft of your Plea with the Clerk of the Rules, as Instructions for him to draw the Rule.——If the Term is expired before you apply for this Rule, it is necessary (notwithstanding a Motion is not actually made) to get a Judge's Order to authorize the Clerk of the Rules to draw this Rule up, which Order the Judge's Clerk makes out of Course, without your taking out a Summons.—A like Order must be got to warrant a Rule to pay Money into Court when paid out of Term.

Precedents of Special Pleas.

Michaelmas Term, 18th George III.

Lee.

William
ats
Morgan.
Plea of Solvit
post diem.

AND the said John, by C. D. his Attorney, comes and defends the Wrong, when, &c. and craves Oyer of the said Writing obligatory, and it

It is read to him, &c. he likewise craves Oyer of the Condition of the said Writing obligatory, which is read to him in these Words, to wit, The Condition of the above written Obligation, &c. (Copy the Condition of the Bond) which being read and heard, the said John says, that the said Richard ought not to have or maintain his said Action thereof against him, because he says, that after the making of the said Writing obligatory, and after the said first Day of November, in the Year of our Lord 1776, mentioned in the said Condition, and before the Day of the suing forth of the original Writ of the said Richard, (if the Action be by Bill, say, and before the Day of exhibiting of the Bill of the said Richard,) to wit, at Westminster, in the County of Middlesex aforesaid, he, the said John, paid to the said Richard, the said Sum of 50 l. contained in the said Condition, according to the Form and Effect of the Statute in such Case made and provided, together with all Interest then due thereon, and this he is ready to verify, wherefore he prays Judgment, if the said Richard ought to have or maintain his said Action thereof against him, &c. S. Cox.

And the said John by C. D. his Attorney, comes and defends the Wrong and Injury, when, &c. and prays Oyer of the said Writing Obligatory, and it is read to him, &c. He also prays Oyer of the Condition of the said Writing Obligatory, and it is read to him in these Words, to wit, The Condition, &c. which being read and heard, the said John says, that the said Richard ought not to have or maintain his aforesaid Action thereof against him, because he says, that he, the said John, paid to the said Richard, upon the first Day of November, in the said Condition mentioned, the said 50 l. which he the said John ought to have paid to the said Richard on that Day, together with all Interest then due thereon, according to the Form and Effect of the said Condition, to wit, at Westminster, in the County of Middlesex aforesaid, and this he is ready to verify, wherefore he prays Judgment, if the said

*Solvit ad diem to
a Declaration in
Debt on Bond.*

P

Richard

Richard ought to have or maintain his said Action against him, &c.

General Release.

Profer of the Release.

And the said Thomas, by C. D. his Attorney, comes and defends the Wrong and Injury, when, &c. and says, that the said Robert ought not to have or maintain his said Action thereof against him, because he says, that after the making of the said several Promises and Undertakings in the said Declaration mentioned, above supposed to be made, and before the Day of exhibiting of the said Bill of the said Robert, (if by Original say, *and before the Day of the suing forth of the original Writ of the said Robert*) against him the said Thomas, to wit, on the first Day of August in the said Year of our Lord 1777, at Westminster, aforesaid, in the County of Middlesex aforesaid, by his certain writing of Release, indented, sealed with the Seal of the said Robert, and now shewn here to the Court of our said Lord the King, bearing Date the same Day and Year aforesaid, he the said Robert did release and for ever quit Claim unto the said Thomas, his Heirs, Executors and Administrators, all and all Manner of Action and Actions, Cause and Causes of Action, Suits, Bills, Bonds, Obligations, Debts, Dues, Duties, Reckonings, Accounts, Sum and Sums of Money, Judgments, Executions, Extents, Quarrels, Controversies, Trespasses, Damages and Demands whatsoever, which, against him, the said Thomas, he the said Robert, his Heirs, Executors or Administrators, should or might have Claim, Challenge, or Demand for, or by Reason or Means of any Matter, Cause or Thing whatsoever, from the Beginning of the World to the Day of the Date of the said Writing of Release, as by the said Writing of Release amongst other Things appears, and this he is ready to verify, wherefore he prays Judgment of the said Henry, ought to have or maintain his said Action thereof against him, &c.

Plea of Nullity
Record to a Declaration on a
Judgment.

And the said John by C. D. his Attorney, comes and defends the Wrong and Injury, when
&c.

&c. and says, that the said William ought not to have or maintain his aforesaid Action thereof against him, because he says, that there is no such Record of Judgment remaining in the Court of our Lord the King, before the King himself now, here, to wit, at Westminster aforesaid, in the County aforesaid, as the said William hath by his Declaration above supposed, and this he is ready to verify, wherefore he prays Judgment, if the said William ought to have or maintain his said Action thereof against him, &c.

And the said Thomas by C. D. his Attorney, ^{Plea of Judgment recovered in the Common Pleas.} comes and defends the Force and Injury, when, &c. and says, that the said Robert ought not to have or maintain his said Action, against him the said Thomas, because he says, that the said Robert in Trinity Term, in the 17th Year of the Reign of his present Majesty King George the III^d. impleaded the said Thomas, in his Majesty's Court, before Sir William de Grey, Knt. and his Companions, then his Majesty's Justices of the Bench at Westminster, in a certain Plea of Trespas upon the Case, to the Damage of the said Robert of 40 l. of, and for the not performing the very same identical Promises and Undertakings, mentioned in the said Declaration of the said Robert, and such were the Proceedings in the said Court of the Bench, that the said Robert afterwards, to wit, in the same Trinity Term, in the 17th Year aforesaid, by the Consideration and Judgment of that Court, recovered against the said Thomas 40 l. which in the same Court were adjudged to the said Robert for his Damages which he had sustained, as well by occasion of the not performing the very same identical Promises and Undertakings mentioned in the said Declaration, as for his Costs and Charges, by him laid out about his Suit in that Behalf, whereof the said Thomas is convicted, as by the Record and Proceedings thereof still remaining in the said Court of the Bench at Westminster aforesaid, in its full Force,
P 2 Strength

Strength and Effect, not in the least reversed, annulled, or made void, more fully appears; and this he is ready to verify, wherefore he prays Judgment, if the said Robert ought to have or maintain his said Action thereof against him, &c.

Flea of Son, Assault, Demer to a Declaration of Trespass and Assault.

And the said Miles by C. D. his Attorney, comes and defends the Force and Injury, when, &c. and as to the coming with Force and Arms, and whatever is against the Peace of our Lord the King, he, the said Miles says, that he is not guilty thereof, and of this he puts himself upon his Country. And as to the Residue of the said Trespass above, supposed to be done, the said Miles saith, that the said Joseph ought not to have or maintain his aforesaid Action thereof against him, because he saith, that the said Joseph, at the Time when the said Trespass, is above supposed to be done at the said Parish of St. Giles in the Fields, in the said County of Middlesex, with Force and Arms, to wit, with Swords, Sticks, Staves, Knives and Fists, made an Assault upon him the said Miles, and would then and there have beat, bruised, wounded and ill treated him, if he the said Miles had not then and there immediately defended himself against the said Joseph, and so the said Miles saith, that if any Damage or Mischief then and there happened to the said Joseph, the same was occasioned by the said Assault of the said Joseph, and this he is ready to verify, wherefore he prays Judgment, if the said Joseph ought to have or maintain his aforesaid Action thereof against him, &c.

Misnomer in the Defendant's Christian Name.

And Robert West against whom the said William by his Bill exhibited, complains by the Name of Richard West, by C. D. his Attorney, comes and defends the Wrong and Injury, when, &c. and prays Judgment of the said Bill, because he says, that he was baptized by the Name of Robert, and by that Name, from the Time of his Baptism hitherto, has been always known and named *without this;*

this; that the said Robert now is, and ever was known and named by the Name of Robert, as by the said Bill is above supposed, and this he is ready to verify, wherefore he prays Judgment of the said Bill, and that the same may be quashed, &c.

And the said William by C. D. his Attorney, Plea of Tenders comes and defends the Wrong and Injury, when, &c. and as to the said Promise, and Undertaking in the said Declaration, lastly above-mentioned, and also as to the said Promise and Undertaking in the said Declaration first above-mentioned, except as to 10l. Parcel of the said Sum of 40l. contained in the said Promise and Undertaking in the said Declaration first above-mentioned, says, that he did not undertake and promise in Manner and Form, as the said Samuel hath above thereof complained against him, and of this he puts himself upon the Country, &c. And as to the said Promise and Undertaking in the said Declaration first above-mentioned, as to the said Sum of 10l. Parcel of the said Sum of 40l. therein contained, the said William saith, that the said Samuel ought not to have or maintain his aforesaid Action thereof against him, to recover any Damages by Reason of the Non-Payment of the said Sum of 10l. because he says, that after the making of the said Promise and Undertaking in the said Declaration first above-mentioned as to the said 10l. and before the Day of exhibiting the Bill of the said Samuel, that is to say, on the first Day of July, in the said Year of our Lord 1777, at London aforesaid, in the Parish of St. Mary le Bow, in the Ward of Cheap aforesaid, he the said William tendered and offered to pay to the said Samuel the said 10l. which the said Samuel then and there refused to accept from the said William; and the said William further says, that he the said William, from the Time of making the said Promise and Undertaking in the said Declaration first above-mentioned, as to the

Uncore prift.
Proferit.

the faid 10l. and always hitherto hath been and still is ready to pay to the faid Samuel the faid 10l. and the faid William brings the fame here into Court, ready to be paid to the faid Samuel, if the faid Samuel will accept the fame from the faid William, and this the faid William is ready to verify, wherefore he prays Judgment, if the faid Samuel ought to have or maintain his faid Action, to recover any Damages, by Reason of the Non-payment of the faid Sum of 10l. againft him, &c.

Note, A Tender cannot be pleaded generally to a Declaration, and if meant to be pleaded to more than one Count, the particular Sums tendered must be fet forth.

Set off.

IF a counter Debt be due to the Defendant he may either plead a set off, or give the general Issue, and Notice, that upon the Trial, the same will be set off against the Demand of the Plaintiff.

Plea of General
Issue and Set off.

And the faid George, by C. D. his Attorney, comes and defends the Wrong and Injury, when, &c. and says, that he did not undertake and promise in Manner and Form, as the faid Henry hath above thereof complained against him, and of this he puts himself upon the Country; and the faid George for further Plea in the Behalf, by leave of the Court here for this Purpose, first had and obtained, according to the Form of the Statute, in such Case lately made and provided, says, that the faid Henry ought not to have or maintain his faid Action against him, because he says, that the faid Henry at the time of exhibiting his faid Bill, was, and still is indebted to the faid George, in more Money than is due, and owing from the faid George to the faid Henry, upon the several Promises and Undertakings in the faid Declaration mentioned, that is to say, in the Sum of 50l. of lawful Money of Great Britain,

for

for divers Goods, Wares and Merchandizes, before that time sold, and delivered by the said George to the said Henry, at his special Instance and Request; and in other 50l. of like lawful Money for so much Money by the said George, before that time laid out, expended, and paid to and for the Use of the said Henry, and at his like Instance and Request, to wit, at London afore-said, in the Parish and Ward afore-said, which said several Sums of Money, exceed the Damages sustained by the said Henry, by reason of the Non-performance of the said several Promises and Undertakings in the said Declaration mentioned. And the said George is now willing, and hereby offers to set off and allow so much of the said several Sums of Money so due, and owing from the said George to the said Henry as afore-said, as shall be sufficient to satisfy the Damages sustained by the said Henry, by Reason of the Non-performance of the said several Promises and Undertakings in the said Declaration mentioned against such Damages, according to the Form of the Statute in such Case made and provided, and this he is ready to verify, wherefore he prays Judgment, if the said Henry ought to have or maintain his said Action against him, &c.

And the said George by C.D. his Attorney, comes Plea and Notice and defends the Wrong and Injury, when, &c. and of Set off. says, that he did not promise and undertake in Manner and Form, as the said Henry hath above thereof complained against him, and of this he puts himself upon the Country.

Mr. A. B.

Take Notice, That the said Defendant, George Thompson, intends to give in Evidence at the Trial of this Cause, and insist that the said Plaintiff, Henry Jones, was before, and at the Time of exhibiting the Bill of the said Plaintiff against the said Defendant,

Defendant, and still is indebted to the said Defendant in more Money than is due to the said Plaintiff, by Reason of the Promises and Undertakings in the Declarations, in this Cause mentioned, to wit, at London, in the Parish of St. Mary le Bow, in the Ward of Cheap, that is to say, in the Sum of 50 L. of lawful Money of Great Britain, for so much Money by the said George, before that Time lent, and advanced to the said Henry, at his special Instant and Request; and in the further Sum of 50 L. of like lawful Money, for so much Money by the said George, before that Time, laid out, expended, and paid to and for the Use of the said Henry, and at his like Instant and Request. All which said several Sums of Money, or so much thereof, as will be sufficient to answer and satisfy such Demands as the said Plaintiff, Henry, shall be able to prove against the said Defendant George, by Reason of the Promises and Undertakings in the said Declaration mentioned at the Trial of this Cause, the said George will give in Evidence, set off and deduct against such Demands of the said Plaintiff, according to the Form of the Statute in such Case made and provided. Dated, &c.

To Mr. A. B.
Plaintiff's Attorney. }

Your's, &c.

C. D. Deft's Attorney.

The above Notice is written underneath the Plea on the same Sheet of Treble-penny; a Copy on Treble-penny must also be made and kept by the Defendant's Attorney, it being necessary to prove the Delivery thereof, on the Trial of the Cause.

If the Defendant's Demand be not sufficient to cover the Plaintiff's, he must pay into Court, under the

the common Rule, so much as will be sufficient for that Purpose, and serve a Copy of such Rule on the Delivery of the Plea, and Notice to the Plaintiff's Attorney.

C H A P. XXXIV.

Of paying Money into Court.

WHEN the Dispute between the Parties is not, whether any, but what Sum of Money is due to the Plaintiff, it is necessary that so much as is acknowledged by the Defendant, be brought into Court, that is paid into the Hands of the proper Officer for the Use of the Plaintiff, who may at any Time, either before or after Trial, tho' nonsuited, receive the same, the Defendant having confessed so much to be due.

By the bringing the Money into Court, the Defendant discharges himself of all future Costs, in case the Plaintiff continues his Suit, and upon trial does not obtain a Verdict against him for more than the Sum paid into Court, but if the Plaintiff receives the same in full Discharge of his Suit, he is intitled to Costs, to that Time, according to the Terms of the Rule drawn up on this Occasion, tho' if he proceed further in his Action, the Defendant becomes intitled to Costs *ab initio*, yet the Court on Application (unless the Plaintiff has actually proceeded to Trial, and is thereupon nonsuited) will order that Costs be taxed by the Master on the Part of the Plaintiff, to the paying the Money into Court, and on the Part of the Defendant, on Account of the subsequent Proceedings, and thereupon the Balance be paid to the Party in whose favour it appears to be upon such Taxation; and it is usual for the Defendant's Attorney to consent to these Terms, without putting the Plaintiff to the Expence of a Motion.

Q

First

How to pay
Money into
Court and ob-
tain the Rule
for that Pur-
pose.

First pay the Money admitted to be due to Mr. Heberden, who acts in this for the Master, he is intitled to 20 s. for every 100 l. paid into Court, and so in proportion for every greater or less Sum, but when under 10 l. he takes 2 s. two Shillings are also paid for the Receipt, then get a Motion-paper, for leave to pay Money into Court, signed by Council, (it is a Motion of course) this take with the Receipt to the Clerk of the Rules, who will thereupon draw up your Rule, with a Copy of which you serve the Plaintiff's Attorney, and at the same time give him the General Issue.

If the Money be paid into Court in Vacation, a Judge's Order for that Purpose must also be procured, (vide page 112.)

If the Plaintiff accept the Money paid into Court in discharge of the Action, he gets an Appointment of the Master to tax Costs on the Copy of the Rule, wherewith he is served, and serves the Defendant therewith, and if after Taxation, the Defendant do not pay the Costs taxed, the Plaintiff must proceed in his Suit, as if no Money had been paid in, for he cannot under the Rule, move for an Attachment.

How on a Plea
of Tender.

On a Plea of Tender, the Defendant also pays the Money due into Court, as a Profert, and takes Mr. Heberden's Receipt in the Margin of the Draft of the Plea, which is copied on that filed with the Clerk of the Papers, no Rule is drawn up to pay the Money into Court; the only one to be obtained in this Case, is to plead several Matters, a Tender being seldom pleaded singly.

In Ejectment brought by Mortgagee, Mortgagor may pay Principal, Interests, and Costs into Court, and move for a Rule to stay Proceedings. *Strange* 413.

Money payable by Installments upon a Lapse of Payment and Action brought, Court will stay Proceedings on the Lapse Payment, and Costs being paid into Court, and if on Bond, will allow Judgment to be signed thereon, with stay of Execution till next Default, as a collateral Security. *Strange* 958.

On

On special Action on the Case for Damages done to a Chaise let to hire by immoderately driving. Money not allowed to be paid into Court. *Strange 787.*

On Ejectment for Non-payment of Rent, Court will stay Proceedings, on Payment of same, and Costs into Court. *Strange 900.*

No bringing Money into Court in Debt, unless on Bond, under Stat. 4 & 5 Annæ.

In an Action for Delapidation, Money cannot be brought into Court, but Defendant must tender Amends. *Strange 906.*

Court will permit Defendant to withdraw general Issue, on bringing Money into Court, and pleading same, without Prejudice to the Plaintiff's Suit. *Strange 1276.*

C H A P. XXXV.

How to proceed to compel the Parties to join Issue and in Demurrer.

IF either the Plaintiff or the Defendant refuse, or neglect to reply, rejoin, surrejoin, rebut, surrebut, plead in Bar, join in Demurrer, enter the Issue or Demurrer, according to the Party with whom the Matter rests, you apply to Mr. Benton, the Master, for a Rule for any of these Purposes, it is usually taken on the Back of the last Pleading had in the Cause, pay nothing for the Rule, then take it to the Clerk of the Rules, who will enter it, and mark at the Foot of the Rule, "Entered." Pay him 1 s. 10 d. entering, and serve a Copy on the adverse Party's Attorney thus,

Michaelmas Term, 18th Geo. III.

Franks } Friday next, after fifteen Day of St.
against } Martin, to Reply.
Parker. }

Entered.

The Practising Attorney :

On all special Rules given by the Secondary to reply, rejoin, &c. the Party who is to do the Act, hath four Days exclusive after Service, of the Rule for these Purposes, and on Failure thereof, Judgment may be signed.

Sunday, or any Holiday on which the Court does not sit, or the Office is not open, if it be not the last, is to be accounted a Day within these Rules.

If a Cause hath continued four Terms without Prosecution before Issue joined, each Party shall have a whole Term's Notice to reply, rejoin, &c. unless the Cause has been stayed by Injunction or Privilege. So if four Terms have elapsed after Declaration delivered, the Defendant shall have the like time to plead.

If the Action be in London or Middlesex, the Defendant ought not to give a Rule for the Plaintiff to enter his Issue the same Term in which the Issue is joined, unless Notice of Trial has been given; and in a Country Cause the Plaintiff is no ways bound to enter his Issue, the same Term.

If the Defendant in his Plea make a Profert of any Deed, &c. the Plaintiff may pray Oyer, and shall have a Copy thereof, and the same Time to reply as he had at the Time of demanding Oyer.

Where the Plaintiff takes Issue upon the Defendant's Pleading, or traverses the same, or demurs, so that the Defendant is not let in to alledge any new Matter, the Paper Book may be made up without giving a Rule to rejoin.

C H A P. XXXVI.

Demurrer.

AN Issue upon Matter of Law is called a Demurrer, and it confesses the Facts to be true, as stated by the opposite Party, but denies that by the Law arising upon those Facts, any Injury is done to the Plaintiff, or that the Defendant has made out a legitimate Excuse, according to the Party, which first demurs, *Demorator* rests or abides upon the Point in Question, as if the Matter of the Plaintiff's

Plaintiff's Complaint, or Declaration, be insufficient in Law, as not assigning any sufficient Trespas, then the Defendant demurs to the Declaration; if on the other Hand the Defendant's Excuse or Plea be invalid, as if he pleads, that he committed the Trespas by Authority of a Stranger, without setting out the Stranger's Right, here the Plaintiff may demur in Law to the Plea, and so on in every other Part of the Proceeding, where either Side perceives any material Objection in Point of Law, upon which he may rest his Cause.

The Form of such Demurrer is by averring the Declaration or Plea, the Replication or Rejoinder to be insufficient in Law to maintain the Action or the Defence, and therefore praying Judgment for want of sufficient Matter alledged. Sometimes Demurrers are merely for want of sufficient *form* in the Writ or Declaration, but in case of Exceptions to the Form or Manner of pleading, the Party demurring, must by Stat. 27 Eliz. c. 5. & 4 & 5 Annæ. c. 16. set forth the Causes of his Demurrer, or wherein he apprehends the Deficiency to consist, and upon a *general*, or such a *special* Demurrer, the opposite Party avers it to be sufficient, which is called a Joinder in Demurrer, and then the Parties are at Issue in point of Law, which Issues in Law or Demurrer, the Judges of the Court, before whom the Action is brought must determine. *Black. Commentaries.*

If there be good Cause of Demurrer, the Plaintiff's Attorney should take out a Summons to amend on Payment of Costs, but if otherwise, upon a *general Demurrer to a Declaration*, the Plaintiff's Attorney adds a Joinder in Demurrer thereto, and himself makes up and delivers the Issue thereupon, for which the Defendant shall pay 4 d. per Sheet, besides Stamps, or Judgment may be signed; but if the Demurrer be *special*, or if *general*, after a *special Plea pleaded*, the same being filed, the Clerk of the Papers makes up the Demurrer-Book, by adding a Joinder, &c. thereto, and gives a Rule in the

How to make
up Demurrer-
Book, and pro-
ceed to Argu-
ment.

Margin,

Margin, for the Defendant to receive and return the same to be inrolled to the Plaintiff's Attorney. If he returns the same, and pays for the Entries, as mentioned under the Head of Paper-Book, you make an *Incipitur* on a King's Bench Roll, get a Number Roll, and carry the same with the Demurrer Book, to the Clerk of the Judgments, enter and Docquet, your Issue finish your Entry on the Roll, and then carry the same to, and file it at the *Nisi Prius* Office in Gray's-Inn, after which move by Council for a *Concilium*, that is a Day for arguing the Demurrer, pay him 10s. 6d. for Motion, draw up your Rule with the Clerk of the Rules, pay for same 4s. then apply to the Clerk of the Papers, and enter your Demurrer with him for Argument. Make Copies of the Demurrer Book for the Judges on unstamped Paper. The Plaintiff leaves Books for the Chief and Senior Judges at their Chambers, and pays their Clerks with same 2s. and the Defendant's Attorney delivers Books to the other two Judges in like Manner, which if he neglect to do two Days before the Argument, the Plaintiff must do it for him, and in that Case the Defendant cannot be heard on the Argument. On the Day of Argument get the Roll to be brought into Court, and move by Council for Judgment. If Judgment goes for the Plaintiff, draw up your Rule for Judgment with the Clerk of the Rules, pay for the same 4s. and if your Action be in Case, Trespass, &c. wherein your Judgment is interlocutory, give notice of executing Inquiry, and proceed to the Execution thereof. But if the Judgment be final, you stamp either the Rule for Judgment, or the Paper-Book, with a double Half-Crown Stamp, get the Clerk at the *Nisi Prius* Office, to attend the Master with the Roll, and he will tax your Costs and mark the Amount thereof in the Margin of the Roll, after which you may sue out Execution.

If Judgment go for the Plaintiff before the Expiration of the Notice given for Trial on the Paper-Book, he may execute his Inquiry the same Day on which

which Notice was given for Trial.—Rule. H. 8. G. 1. but he should in this Case give the Defendant's Attorney, Notice of the Hour and Place of executing the same.

If the Plaintiff demurs, or takes Issue on the Defendant's Plea, Rejoinder, or Rebutter, and the Defendant, in Case of a Demurrer joins therein, and the Plaintiff will not make up the Book, and enter it on Record, the Defendant may by Rule E. II. W. III. make up the Book and enter it. And when he has made up the Book he must deliver it to the Plaintiff, and pay him for the Entry of his (the Defendant's) Pleadings, because the Plaintiff may perhaps enter the Issue, as he has a Right to do, at any Time, before the Expiration of the above-mentioned Rule, given by the Secondary, which Rule ought to be served on the Plaintiff, at the same Time the Book is delivered to him. If the Plaintiff does not enter the Issue, the Defendant may, at the Expiration of Rule, and give Notice of Trial by *proviso*, but then the Plaintiff ought to return the Defendant the Money he received from him for the Entry on his Part, but this Method of proceeding is now antiquated, a more eligible Way for the Defendant to pursue in this Case, being to move for Judgment, as in the Case of a Non-suit, under Stat. 14 G. II. c. 17.

The Clerk of the Papers not to receive any *special* Plea or Demurrer, unless signed by Council; and in Copies of the Pleas and Paper-Book, must set down the Councils Names, E. 18. Car. 2. so must Attornies on the Copies of the Books for the Judges.

A General Demurrer cannot be waived, a Special Demurrer may; in Case of a frivolous Demurrer, Court on Motion will order Defendant to stand by it, or plead *de novo*, on the Morrow or instantly.

All special Causes set down by the Clerk of the Papers to be argued, are to be entered at least four Days exclusive of the Day of Argument, of which Notice is forthwith to be given to the Attorney or Agent on the other Side. And all such Causes are to

be

The Practising Attorney :

to be argued in the Order they stand entered, and so not to be adjourned by Consent, or otherwise, unless the Court shall for reasonable Cause, verified by Affidavit, upon Application to be made by either of the Parties, their Attorney or Agent, (at least two Days, before the Day of Argument) otherwise order. And all such Causes remaining undetermined at the End of any Term, shall without any new Entry be continued in the Book kept by the Clerk of the Papers, to come on the next Term in the Order they stand.—*Rule Mich. 1756.*

If there be an Issue as to Part, and a Demurrer as to other Part, you give Notice of Trial, and proceed to try your Cause and argue your Demurrer too as before directed.

Precedents of Demurrers,

General Demurrer to a Declaration.

And the said William, by C. D. his Attorney, comes and defends the Wrong and Injury, when, &c. and prays Judgment of the said Bill of the said William, because he says, that the said Bill and the Matter therein contained, are not sufficient in law to maintain the said Bill, and that the said William hath no need, nor is he bound by the Law of the Land in any Manner to answer, and this he is ready to verify, wherefore for want of a sufficient Bill in this Behalf, the said William prays Judgment of the said Bill, and that the same may be quashed, &c.

Joinder.

And the said Samuel says, that by Reason of any thing before alledged by the said William, the said Bill ought not to be quashed, because he says, that the said Bill and the Matter therein contained, are sufficient in Law, to maintain the said Action of the said Samuel against the said William, which said Bill, and the Matter therein contained, the said Samuel is ready to verify and prove as the Court shall award; and because the said William doth not answer the said Bill, nor hath hitherto in any Manner denied the same; the said Samuel prays Judgment,

ment and his Damages, by occasion of the Premises to be adjudged to him, &c. But because the Court of our Lord the King, before the King himself, now here, is not yet advised what Judgment to give of, and concerning the Premises; a Day is therefore given to the said Parties, to be before our Lord the King at Westminster, until next, after to hear Judgment thereon, for that the Court of our said Lord the King now here, is not yet advised thereof.

And the said Charles says, that he by Reason of any thing by the said Andrew above, in pleading alleged, ought not to be barred from having his said Action against the said Andrew, because he says that the said Plea by the said Andrew, in Manner and Form above pleaded, and the Matter therein contained, are not sufficient in Law to bar the said Charles from having his said Action against the said Andrew, to which said Plea, in Manner and Form above pleaded, the said Charles has no need, nor is he bound by the Law of the Land, in any Manner to answer, and this he is ready to verify, wherefore, for want of a sufficient Plea in this Behalf, the said Charles prays Judgment, and his Damages, by occasion of the Premises, to be adjudged to him, &c.

And the said William says, that the Plea afore-said by the said Thomas in Manner and Form afore-said above, in his Replication pleaded, and the Matter therein contained, are in no wise sufficient in Law for the said Thomas to have or maintain his said Action thereof against him the said William, to which the said William hath no need, nor by the Law of the Land is obliged in any Manner to answer, and this he is ready to verify; wherefore for want of a sufficient Replication in this Behalf, the said William, as before, prays Judgment, and that the afore-said Thomas may be precluded from having his said Action thereof against him, &c.

The Practising Attorney:

C H A P. XXXVII.

Of the Issue.

WHEN in the Course of Pleading, the Parties come to a Point, which is affirmed on one Side and denied on the other, they are then said to be at Issue, the Question to be determined being ascertained by, and issuing from the Affirmation on one Side and the Negation on the other.

In making up the Issue, all the Pleadings are to be fairly transcribed, in the Order they were pleaded, on Treble-penny stamped Paper, with a Memorandum introductory thereto, and shortly stating the Commencement of the Action, as first, the Declaration next the Plea, with or without an Imparlance, as it is or is not of the same Term, with the Declaration and the other Pleadings in course, with an Award of a Venire to the Sheriff, commanding him to summon a Jury to try the Issue joined between the Parties, and lastly, a *Dies datus*, or Day given to them to be in Court, to hear their Determination thereof.

This Memorandum varies in the four following Cases, viz. *First*, When the Issue is of the same Term with the Declaration. *Secondly*, When the Declaration is intitled not of any Term generally, but of a particular Day in Term, which is necessary when the Cause of Action arises after the first Day of Term, in which the Action is brought. *Thirdly*, When the Declaration is of a precedent Term; and *Fourthly*, When the Declaration is above four Terms before the Issue is made up.

Michaelmas Term, 18th Geo. III.

Lee.

An Issue of the *Middlesex*, to wit. Be it remembered, that on the same Term with Thursday next, after the Morrow of All-Souls, (the Declaration. first

first Return of the Term) in this same Term, before our Lord the King at Westminster, comes * Robert Franks by A. B. his Attorney, and brings into the Court of our said Lord the King, before the King himself, now here, his Bill against Thomas Parker, being in the Custody of the Marshal of the Marshalsea of our said Lord the King, before the King himself of a Plea of Trespas on the Case, and there are Pledges for the Prosecution thereof, to wit, John Doe and Richard Roe, which said Bill follows in these Words, to wit, Middlesex, to wit, Robert Franks complains of Thomas Parker, &c. (Copy the Declaration throughout, omitting only the Pledges, and then in a fresh Line begin the Plea thus,)

And the said Thomas, by C. D. his Attorney, Plea. comes and defends the Wrong and Injury, when &c. and says, that he did not undertake and promise in Manner and Form, as the said Robert hath above thereof complained against him, and of this he puts himself upon the Country. And the said Robert doth the like. Therefore let a Jury come thereupon before our Lord the King at Westminster, on Tuesday next, after fifteen Days of Saint Martin, (some Return Day before the Trial) and who neither, &c. to recognize, &c. because as well, &c. the same Day is given to the same Parties there.

Similitur.

Award or Venire.

Dies datus.

These &c.'s are Contractions of the general Words in the Venire, which is here awarded, and may as well, and sometimes are put in at length thus; " And who are in no wise of Kin, either to the said (Plaintiff) or to the aforesaid (Defendant) to recognize upon their Oaths the whole Truth of the Premises, because as well, the said (Defendant) as the said (Plaintiff) between whom the Controversy is, have put themselves upon that Jury

R 2

" the

* The whole Term is reckoned but one Law-Day, and tho' this relates to the first Day of the Term, it is rather comes than came, the present Tense best agreeing with Term time.

The Practising Attorney:

“ the same Day is given to the Parties aforesaid
“ there.”

An Issue where
the Declaration is
intituled of a par-
ticular Day in
Term,

An Issue where
the Declaration
is of a precedent
Term.

Impar lance.

Plea.

An Issue when
the Declaration
is of above four
Terms standing.

Award of a Ve-
nire and Micti-
mus, on an Issue
in the County
Palatine of Lan-
caster.

London, to wit. Be it remembered, That on Sa-
turday next, after the Morrow of Saint Martin in
this same Term before our Lord the King at West-
minster comes, &c. (as before.)

Kent, to wit. Be it remembered, That in Trinity
Term last past, before our Lord the King at West-
minster came Robert Franks, by A. B. his Attorney,
and brought into the Court of our said Lord the
King before the King himself, then there his Bill
against Thomas Parker, being in the Custody of the
Marshal of the Marshalsea of our said Lord the King,
before the King himself of a Plea of Trespas on the
Case, and there are Pledges for the Prosecution, to
wit, John Doe and Richard Roe, which said Bill
follows in these Words, to wit, Kent to wit, Robert
Franks complains, &c. (the Declaration as before.)

And now at this Day, to wit, on Thursday next,
after the Morrow of All Souls (the first Day of the
Term Issue is joined) in this same Term, to which
Day the said Thomas had leave to imparle to the
said Bill, and then to answer the same before our
Lord the King at Westminster, comes as well the
said Robert by his Attorney aforesaid, as the said
Thomas by C. D. his Attorney; and the said Tho-
mas defends the Wrong and Injury when, &c. and
says (as before.)

London, to wit. Be it remembered, That heretofore
that is to say in *Michaelmas* Term in the seventeenth
Year of the Reign of our Sovereign Lord, the now
King, before the King himself, at Westminster, came
Robert Franks, by A. B. his Attorney (as the last.)

Therefore let a Jury be made thereof, and because
the Issue aforesaid between the Parties above joined,
ought to be tried by Men of the County Palatine of
Lancaster, that is to say, of the Body of the said
County, where the Writ of our said Lord the King,
doth not run, and not elsewhere. Therefore to try
the Issue aforesaid, between the Parties above joined,
let the Record of the Plaint aforesaid be sent to his

Ma-

jefty's Justices of the said County Palatine of Lancaster, so that the same Justices by his said Majesty's Writ of that County to be duly made out, and to the Sheriff of the same County directed, do command the same Sheriff that he cause twelve good and lawful Men of the Body of the said County of Lancaster to come before the said Justices, at their next general Session of Assize, to be holden for the said County, after the said Record shall be delivered to them, each of whom, &c. by whom, &c. and who neither, &c. to recognize, &c. because as well, &c. And when the Verification and Issue aforesaid, shall be there made and tried, that then the said Justices shall send the Record of the Plaint aforesaid, together with every Thing that shall be done thereupon before them in his said Majesty's Court, there to our said Lord the King at Westminster, at a certain Day which the said Justices shall appoint, the said Parties to be in the same Court there to hear Judgment thereupon.

The Award of a Venire and Mittimus is the same in other Counties Palatine mutatis mutandis.

And because the Issue aforesaid between the Parties above joined, ought to be tried by Men of the next English County to the said County of Carmarthen, and not elsewhere. And because the County of Hereford is the next English County to the said County of Carmarthen, therefore let a Jury of the said County of Hereford, come thereupon before our Lord the King at Westminster, on Wednesday next three Weeks of the Holy Trinity (some return Day before the Trial) and who, neither &c. to recognize, &c. because as well, &c. the same Day is given to the said Parties there.

In the Record on a Welch Issue, the *Jurata*, and the *Venire* and *Distringas* are exactly the same as if the Venue were laid in the County, into which the *Venire* is awarded, viz. the next English County.

In Original; the Issue is merely a Copy of the Declaration Plea, &c. without any Memorandum preceding

Award of a Venire on a Welch Issue into the next English County.

Issue by Original

ding the Declaration or Imparlance before the Plea, for no Imparlance was allowed a Defendant in Actions, by Original (Vide Imparlance) and in the Award of the *Venire* you must make it of an original Return. It is usual to intitle the Issue of the Term in which it is made up, but may be otherwise, and brought down by Continuances of *Vicecomes non misit Breve*.

You charge on the back of your Issue 4*d.* per Sheet, besides Stamps; 1*s.* entering Plea and the Declaration, if not before paid, for which if the Defendant's Attorney refuse to pay, or if left for him he do not pay by the Morrow Afternoon, Judgment may be signed. It is also usual to indorse Notice of Trial on the Back of the Issue.

C H A P. XXXVIII.

Notice of Trial and Countermand.

IF the Venue be laid in London or Middlesex, and the Defendant lives within forty computed Miles of the former, eight Days Notice of Trial must be given exclusive of the Day of giving same.

If the Venue be laid in any other County, or the Defendant lives above forty Miles from London, 14 Days Notice must be given exclusive of the Day of giving same.

By Statute of 14 *Geo.* II. Ten Days Notice at least must be given for Trial of a Cause at the Assizes where the Parties reside in the Country; and Quere, whether Ten Days Notice is not sufficient for Trial at the Assizes?

If Issue has been joined four Terms, Plaintiff must give Defendant a Term's Notice of Trial, which Notice must be given before the Effoign Day of the Term wherein the Issue is intended to be tried, and
in

in all Cases where a Term's Notice is required, such Notice must be given before the Effoign Day.

If Notice of Trial be given for one Sitting in London or Middlesex, and the Plaintiff is not prepared to proceed to Trial thereupon, he may continue his Notice to the next Sitting, though a *Ne recipiatur* be entered.

If the Cause be made a *Remanet*, no new Notice of Trial need be given, for the Defendant is bound to attend till the Cause is tried.

In the King's Bench.

Between { Robert Franks, Plaintiff.
and
Thomas Parker, Defendant.

Take Notice, that this Cause will be tried at the Notice of Trial.
Sittings after this present *Michaelmas* Term to be
holden at Westminster-hall, in and for the County
of Middlesex (or wherever the Cause is to be tried.
Dated, &c.

Yours, &c.

To Mr. C. D. } A. B. Plaintiff's Attor-
Plaintiff's Attor- } ney.
ney.

In the King's Bench.

Notice of Con-
tinuance.

Between { Robert Franks, Plaintiff,
and
Thomas Parker, Defendant.

Take Notice, That I hereby continue the Notice
of Trial given you in this Cause for the first Sittings
in this present *Michaelmas* Term to the second Sit-
tings in the same Term, to be holden at Guildhall,
in the City of London.

Dated, &c.

Yours, &c.

Counter-

Countermand of
Notice of Trial.

Notice of Coun-
termand.

Countermand of Notice of Trial to be delivered at least six Days before the intended Trial, exclusive of the Day the same is delivered, unless at the Sit-tings in London and Middlesex, in which Case two Days exclusive is sufficient,

In the King's Bench.

Between { Robert Franks, Plaintiff,
and
Thomas Parker, Defendant.

Take Notice, That I hereby countermand the Notice of Trial given you in this Cause for the Sittings after this present Michaelmas Term.

Yours, &c.

If the Plaintiff do not proceed to Trial, or coun-termand in Time, the Court on Motion and Affidavit of Attendance will grant the Defendant his Costs, occasioned by the Plaintiff's Neglect to be taxed by the Master, and will on Motion stay the Trial for Non-payment of these Costs.

C H A P. XXXIX.

Of making up the Record, and entering the Issue

THE *Nisi prius* Roll or Record contains an In-grossment of the Pleadings, Awards of Writs, and other Acts of the Court in the Course of the Cause; it used formerly to be made up by the Clerks in the King's-Bench Office from the Issue Roll, on which the Pleadings were from time to time entered, and

and by them delivered under Seal for Trial to the Attorney; but when Attornies took upon themselves to carry on the Proceedings by Paper Copies, the making up of the Issue Roll, and Record of Course became a Part of their Business, which when done were taken to the proper Officers, who examined them together, and having filed the Issue Roll, delivered back the Record under Seal to the Attorney as extracted, and made up themselves from the Issue Roll then filed, and were paid for the several Entries accordingly.

The Plaintiff's Attorney must ingross the Record How to make up the Record. in a plain legible Hand on a double Half Crown Skin of Parchment thus.

Pleas before our Lord the King at West-^{First Placita.}minster of Easter (the Term Issue is joined) in the 18th Year of the Reign of our Sovereign Lord Geo. III. by the Grace of God of Great-Britain, France, and Ireland, King, Defender of the Faith, &c. and in the Year of our Lord, 1778.

Roll 700. Lee.

Kent, to wit, Be it remembered (here copy the Issue verbatim)

Pleas before our Lord the King at West-^{Second Placita †}minster, of the Term of the Holy Trinity, in the eighteenth Year of the Reign of our Sovereign Lord George III. by the Grace of God of Great-Britain, France and Ireland, King, Defender of the Faith, &c. and in the Year of our Lord, 1777.

S

Kent,

† The Second Placita is entered on the Record to avoid the Trouble of bringing down an old Issue to the Term wherein it is tried by Continuances of *Viccomes non misit Breve*; but when the Cause is tried of the same Term Issue is joined, (which includes the subsequent Vacation) there does not appear any Reason for the Use of a second Placita.

The Practising Attorney:

Kent, to wit The Jury between Robert Franks, Plaintiff, and Thomas Parker, Defendant, of a Plea of Trespals on the Case (as it is) is respited before our Lord the King at Westminster, until Wednesday next, after eight Days of St. Hilary (the first Return Day after the Trial, if the Action be by original, make the Return accordingly) unless his Majesty's Justices assigned to hold the Assizes in the County aforesaid, shall first come on Monday the 29th Day of July at Maidstone in the said County, according to the Form of the Statute in that Case made and provided, for Default of the Jurors, because none of them did appear. Therefore let the Sheriff have the Bodies of the said Jurors to make the said Jury between the Parties aforesaid accordingly, the same Day is given to the Parties aforesaid at the same Place. And be it known that the Writ of our said Lord the King in this Case upon Record was delivered to the Under-Sheriff of the County aforesaid, the 18th Day of June (the last Day of the Term) in this same Term before our Lord the King at Westminster, to be executed according to Law at his Peril.

Sciendum.

If it be a Town Cause, the Jurata will be as follows, and you omit the Sciendum, but quere, for what Reason?

Middlesex, to wit. The Jury, &c. — (as before to) unless the King's right trusty and well-beloved William, Earl of Mansfield, his Majesty's chief Justice assigned to hold Pleas before the King himself, shall first come on the Day of (the Day of the Sittings at which the Cause is to be tried) at Westminster-hall in the said County, (or "at the Guildhall of the City of London") according to the Form of the Statute, the same Day is given to the Parties aforesaid at the same Place.

How to enter the Issue and pass the Record.

Having properly ingrossed the Record, you make an *Incipitur* of the Issue on a King's Bench Roll, with Warrants of Attorney for the Plaintiff and Defendant, then take the Record Roll, and the Draft of your Issue to the Clerk of the Judgments in the King's Bench Office, who will enter it and mark all three

three.—Pay for entering Issue not exceeding ten Sheets, 3*s.* 6*d.* and 1*s.* for every six more; then carry them to the *Nisi prius* Office, Mr. Way's, in Portugal-street, Lincoln's-Inn-Fields, where the Clerks will examine, seal, and pass your Record (for which you pay 7*s.* 6*d.* for the first eight Sheets and 7*s.* for every eight Sheets more; and in a Country Cause if above three Weeks from the End of the Term 2*s.* for a Judge's Warrant, and if the Record be on an old Issue, you pay both in Town and Country Causes 2*s.* more. It is also usual to pay 6*d.* for sealing the Record though not a Matter of right.

CHAP. XL.

Venire Distringas & Mittimus.

WHEN the Usage began to bring Actions of trifling Value in the Courts of Westminster-hall; it was found an intolerable Burthen to compel the Parties, Witnesses and Jurors, to attend the Trial at Westminster, whither the Sheriff was commanded by the *Venire* to summon them, and where they were actually obliged to attend, however distant their Place of Residence, or inconvenient such an Attendance might be, all Actions being formerly tried at the Bar of the Court, for Remedy whereof a Power was granted by Stat. Westminster 2 13. E. 3. to the Justices of Assize (who regularly take their Circuit through the several Counties after every Hilary and Trinity Term) to try common Issues in civil Actions, with Directions to return them when tried into the Courts above, where alone the Judgment should be given, to which End in the *Venire facias* awarded for Trial of the Issue, the Sheriff was commanded to cause a Jury to come to Westminster, or wherever

The Praesiding Attorney :

the King's Court should be held on a Day in Term subsequent to the Assizes, *Nisi Prius*, unless before that Day the Justices assigned to take the Assizes, should come into that County, by virtue of which the Sheriff returned the Jurors to the Court of the Justices of Assize, and there the Trial was had.

An Inconvenience attended this Provision principally, because as the Sheriff made no Return of the Jury to the Court of Westminster, the Parties were ignorant who they were 'till they came upon the Trial, and therefore were not ready with their Challenges or Exceptions. For this Reason by Statute 24th E. III. Ch. xi. the Method of Trial by *Nisi Prius* was altered, and it was enacted, That no Inquest (except of Assize and Goal Delivery) should be taken by Writ of *Nisi Prius* 'till after the Sheriff had returned the Names of the Jurors to the Court above, wherefore it became and now is the Practice in Civil Causes, to make the *Venire facias* returnable on a Day preceding the Trial of the Cause, and leave out the Clause of *Nisi Prius* therein, whereupon the Sheriff returns this Writ by a Pannel of the Names of the Jurors annexed. This Jury not being summoned, and therefore not appearing on the Day must unavoidably make Default, for which Reason a compulsive Process is awarded against the Jurors called a *Distingas Juratores*, (into which the Clause of *Nisi Prius* is transferred from the *Venire*) commanding the Sheriff to distrain them by their Lands and Goods, that they may appear at Westminster on a Day in Term next, after the Assizes or Sittings, *Nisi Prius*, unless before that Day the Justices shall come to hold such Sittings or Assizes, in the County wherein the Action is brought, and the Entry on the Record is, " That the Jury is respited through Default of the Jurors 'till the next Day after the Trial, then to appear at Westminster, unless before that Time, viz. on Monday the 29th Day of July, the Justices assigned to hold the Assizes in that County, shall come to Maidstone, that is the
Place

“ Place assigned for holding the Assizes; therefore
 “ the Sheriff is commanded to have their Bodies at
 “ Westminster, on the first Day of the next Term,
 “ or before the said Justices of Assize, if before that
 “ Time they come to Maidstone, viz. on the 29th
 “ of July aforesaid.” And as the Judges are sure to
 come and open the Circuit Commission on the Day
 mentioned in the Writ the Sheriff returns, and sum-
 mons the Jury to appear at the Assizes, and there
 the Trial is had before the Justices of Assize and
Nisi Prius.

George the Third, &c. To the Sheriff of Kent, *Venire facias.*
 greeting, We command you, that you cause to come
 before us at Westminster, on Wednesday next after
 three Weeks of the Holy Trinity, (some Return Day
 before the Trial) twelve free and lawful Men of the
 Body of your County, each of whom having 10 *l.* a
 Year at the least, of Lands, Tenements, or Rents,
 by whom the Truth of the Matter may be the better
 known, and who are in no wise of Kin either to Ro-
 bert Franks the Plaintiff, or Thomas Parker the De-
 fendant, to make a certain Jury of the Country be-
 tween the Parties aforesaid, of a Plea of Trespass on
 the Case (as it is) because as well the said Thomas, as
 the said Robert, between whom the Controversy is,
 have put themselves upon that Jury, and have there
 the Names of the Jurors. And this Writ Wit-
 nesses, &c. Lee.

George the Third, &c. To the Sheriff of Kent,
 greeting, We command you that you distrain the
 Bodies of the several Persons, named in the Pannel
 hereunto annexed, Jurors summoned in our Court
 before us, between Robert Franks, Plaintiff, and
 Thomas Parker, Defendant, by all their Lands and
 Chattels in your Bailiwick, so that neither they, nor
 any one for them do intermeddle therewith, until
 you shall have other Command from us in that Be-
 half, and that you answer to us for the Issues of the
 same,

*Distringas Jure-
tores.*

The Practising Attorney:

same, so that you have their Bodies before us at Westminster, on Thursday next, after the Morrow of All Souls (the next Return Day after the Trial) or before our Justices assigned to hold the Assizes in your County; if they shall first come on Monday the 29th Day of July at Maidstone in your County, according to the Form of the Statute in such Case made and provided, to make a certain Jury between the said Parties of a Plea of Trespass on the Case, and to hear their Judgment of many Defaults, and have you there the Names of the Jurors, and this Writ Witness, &c.

Lee.

If it be a Town Cause you say, — “Or before our right trusty and well-beloved William Earl of Mansfield, our Chief Justice, assigned to hold Pleas in our Court before us, if he shall first come on Monday the 22d Day of June (the Day of the Sitting) at Westminster in your County, or at the Guildhall of the City of London.”

If the Action be by original, you make the *Venire* and *Distringas* returnable *ubicumque*, &c. add the Defendant's Addition, and leave out the Word *then* at the Conclusion before the Test of the Writ.

Neither of these Writs are signed Sealing each 7 d. after which you take them to the Sheriff's Office of the County, and his Deputy will return them, and annex a Pannel to the *Distringas*, for which in London pay 4 s. 6 d. in Middlesex 12 s.

In Actions brought in Counties Palatine, no Jury Process is issued out of the Courts above a *Mittimus* of the Record to the Justices, there commanding them to cause a Jury to be summoned to try the Issue between the Parties, and return the same when tried to the Courts at Westminster, being the only Writ sued out here on this Occasion as follows.

George

Dr, New King's Bench Guide.

George the Third, &c. To our Justices of our County Palatine of Lancaster, greeting. The Tenor of a certain Record, before us at Westminster, between Robert Franks, Plaintiff, and Thomas Parker, Defendant, in a Plea of Trespass on the Case (as 'tis) we send you inclosed herein, commanding, that you having inspected the same by our Writ of our said County Palatine, do command the Sheriff of the same County, that he cause twelve free and lawful Men of the Body of the said County, to come before you at your next Session after this Writ shall be delivered to you, each of whom having ten Pounds a Year at least of Lands, Tenements, or Rents, by whom the Truth of the Matter may be the better known and enquired into, and who are in no wise of kin either to the said Robert, or to the said Thomas, to recognize and make a Jury of the Country between the said Parties, in the Plea aforesaid, because as well the said Thomas as the said Robert, between whom the Controversy is, have put themselves upon that Jury. And also that you make such further Process against the said Jurors so to be impannelled between the said Parties, as are in this Behalf used, and commonly made, according to the Law and Custom of the said County, until the Issue aforesaid between the said Parties shall be fully tried; and when the Verification and Issue aforesaid shall be there made and tried before you, then you send the Record of the said Pleint, together with every Thing that shall be then and there done before you therein; and also this Writ to us at Westminster, at a certain Day which you shall appoint to the said Parties, to be there to hear Judgment thereupon. Witness, &c.

Mittimus to the
County Palatine
of Lancaster.

Lee.

Make a Note for the Office, and get this Writ signed, for which pay 1s. 8d. and sealed 7d. then annex it to the Outside of the Record.

CHAP.

C H A P. XLI.

*Of Process to compel the Attendance of Witnesses,
and of examining Witnesses on Interrogatories.*

*Subpcena ad
testificandum.*

GEORGE the Third, &c. To Timothy Wylde, Henry Higgs, John Wildman, and Andrew Jones (four Witnesses may be put in one Subpcena) greeting. We command you that (all and singular Busineses and Excuses being laid aside) you and every of you be and appear in your proper Persons before our Justices assigned to hold the Assizes in and for the County of Kent, according to the Form of the Statute, &c. on Monday the 29th Day of July next (the Day of the Assizes) by Nine of the Clock in the Forenoon of that Day, at Maidstone, in the said County, (if at the Sittings) say—before our right trusty and well beloved William Earl of Mansfield, our Chief Justice, assigned to hold Pleas in our Court before us, on Monday the 22d Day of June next (the Day of the Sittings) by Nine of the Clock in the Forenoon of that Day, at Westminster Hall, in the County of Middlesex) or at the Guildhall of the City of London) then and there to testify all and singular those Things, which you and either of you know in a certain Action now in our Court before us, depending between Robert Franks, Plaintiff, and Thomas Parker, Defendant, (add the Defendant's Addition if the Action be by Original) of a Plea of Trespas on the Case (as 'tis) on the Part of the Plaintiff, (or Defendant as it may be) and at the aforesaid Day to be tried by a Jury of the Country; and this you nor any of you are in no wise to omit, under the Penalty of each of you of 100l. Witness, &c.

Mr.

Mr. Timothy Wylde,—By virtue of a Writ of Subpœna to you directed, and herewith shewn unto you, you are personally to be and appear before his Majesty's Justices, &c. (make this agreeable to the Subpœna) to testify the Truth according to your Knowledge in a certain Action now depending, and then and there to be tried, between Robert Franks, Plaintiff, and Thomas Parker, Defendant, of a Plea of Trespass on the Case, on the part of the Plaintiff. And hereof you are not to fail under the Penalty of 100*l*. Dated, &c.

Subpœna
Ticket.

By the Court.

George the Third, &c. To (the Witnesses) greeting. We command you and every of you, that all and singular Businesses and Excuses being laid aside) you and every of you be and appear in your proper Persons, before Sheriff of the County of Middlesex, on (the Day of the Week, Month and Year, the Inquiry is to be executed) at (the Place where) there to testify the Truth of all and singular those Things, which you or either of you know, in a certain Action now in our Court before us depending, between Robert Franks, Plaintiff, and Thomas Parker, Defendant, of a Plea of Trespass on the Case, on the Part of the Plaintiff, in which said Plea our certain Writ of Inquiry of Damages hath been awarded in our said Court before us to the said Sheriff, and is then and there to be executed in due Form of Law. And this you nor any of you shall in no wise omit, under the Penalty of every of you of 100*l*. Witnesses, &c.

Subpœna on the
Execution of a
Writ of Inquiry.

Lee.

If any Person has in his Possession any Deeds, Writings, Books of Account, or other Things, which it may be necessary to produce on the Trial of the Cause, or on the Execution of the Inquiry, he should be served with a *Spa duces tecum*, commanding

Subpœna duces
tecum.

T

ing

The Praefising Attorney :

ing him to bring with him and produce the same at the Trial of the Cause, or Execution of the Inquiry, which Subpoena is like the former, only you introduce the following Words after Mention of the Place of Trial, or of executing the Inquiry: " And also that you bring with you and produce at the Time and Place aforesaid, a certain Deed or Instrument in Writing, bearing Date, &c. (describe the Thing to be produced) then and there to testify and shew all and singular those Things which you or either of you know, or the said Deed or Instrument doth import, of and concerning a certain Action now in our Court before us depending, &c.

Make a Precipe for, and get Subpoena signed;— pay 1s. 8d. and Sealing 7d.

A Copy of the Subpoena or a Ticket must be served on the Witness, and a reasonable Sum at the same Time tendered him for his Expences in attending the Trial, in which Expences you must be guided by the Quality of the Person, and Distance of his Place of Residence from that where the Cause is tried, or Inquiry executed. And if he do not then attend, the injured Party may, on an Affidavit of the Fact, move for an Attachment against him, or bring an Action for Damages upon the Statute 5 Eliz.— In Town Causes, where the Witness also lives in Town, it is usual to give a Shilling with the Subpoena, but whether this be sufficient or not, depends on Circumstances, which must be considered by the Attorney serving it.

If a Witness should be detained in Prison, the following *Habeas Corpus* may be had to bring him into Court as an Evidence, on leaving which with the Sheriff or Person in whose Custody he is detained, you must tender reasonable Charges for bringing the Prisoner up, or he is not bound to obey the *Habeas Corpus*.

George

George the Third, &c. To the Warden of our Hab. Corpus ad
 Prison of the Fleet, greeting. We command you, testificandum.
 that you have the Body of Edward Mills, detained
 in our Prison under your Custody, as it is said, by
 whatsoever Name he may be charged in the same
 Prison, under safe and secure Conduct, before, &c.
 (as in the Subpoena) then and there to testify the
 Truth according to his Knowledge, in a certain
 Action in our Court before us depending, and then
 and there to be tried, between Robert Franks, Plain-
 tiff, and Thomas Parker, Defendant, in a Plea of
 Trespass on the Case on the Part of the Plaintiff;
 and immediately after the said Edward shall have
 then and there given his Testimony before the said
 Chief Justice, (or before the said Justices) to return
 him the said Edward to our said Prison, under the
 like safe and secure Conduct, and have then there
 Writ. Witness, &c. Lee.

Make a Precipe for this Writ, and get it signed,
 for which pay in Term 6s. 8d. in Vacation 7s. 8d.
 and Sealing 7d. Vide Habeas Corpus.

If a Witness be going beyond Sea, so that he can-
 not possibly attend the Trial, the Party on whose
 Behalf his Testimony is taken, by Motion on an Af- Interrogatories.
 fidavit of the Facts, may obtain a Rule to examine
 him before a Judge, at his Chambers, on Interroga-
 tories; and for this Purpose the Party examining
 must get Interrogatories drawn and signed by Coun-
 cil, and give Notice to the adverse Party's Attorney
 of the Time of such Examination, who may attend
 and cross-examine him.—The Depositions when
 taken are copied by the Judge's Clerk, for each
 Party, and shall be read in Evidence on the Trial of
 the Cause.

C H A P. XLII.

Of entering the Cause for Trial, and of the same being made a Remanet. -

In London and Middlesex, when Cause to be entered for the Sittings in Term.

IF your Cause be to be tried in London or Middlesex, at the Sittings within Term, it must be entered in the Marshall's Book, which is kept at the Chief Justice's Chambers two Days before the Sitting, for which Notice of Trial is given, or a *ne recipiatur* may be entered by the Defendant. Hil. 15 and 16, Car. 2.

When after Term in Middlesex.

No Record of *Nisi Prius* shall be received at any Sitting *after Term* in *Middlesex*, unless the same shall be delivered to and entered with the Marshal, two Days after the last Day of every Term.

And in London.

No Record of *Nisi Prius* shall be received at any Sitting *after Term* in *London*, unless the same shall be delivered to and entered with the Marshal, the Day before the Day on which the Sittings in London shall be first adjourned.

Causes to be tried in the Order they are entered, unless, &c.

And every Cause to be tried at *Nisi Prius* in *London* and *Middlesex*, shall be tried in the Order in which it is entered, (beginning with the *Remanets*) unless ordered to the contrary by the Judge on reasonable Cause.—Notice fixed up in the King's Bench Office, Mich. 17. G. 2.

Pay entering Cause, 11s. 8d. viz. Chief Justice 6s. 8d. Marshal 4s. Cryer 1s.

No

No *ne recipiatur* of a Record for Trial at the Sit- At Sittings after
tings after Term can be entered, till after Proclama- Term, no *ne re-*
tion made by Order of the Chief Justice, for Attor- *ciatur* to be
nies to bring in their Record, and then, if Record entered till after
not brought in, a *ne recipiatur* may be entered. Proclamation.

In every Cause to be tried before the Judges in On Circuit
their respective Circuits, the Writ and Record shall Writ and Record.
be entered together, and no Record shall be received to be entered to-
without the Writ. Trin. 10. and 11. G. 2. gether.

No Writ and Record of *Nisi Prius* shall be re- And in what
ceived at the Affizes in any County in England, un- Time.
less they shall be delivered to and entered with the
Marshal, before the first Sitting of the Court, after
the Commission Day, except in the Counties of
York and Norfolk; and there the Writs and Records
shall be delivered to and entered with the Marshal,
before the first Sitting of the Court, on the second
Day after the Commission Day; otherwise they shall
not be received. And every Cause shall be tried in
the Order in which it is so entered, without any
Preference or Delay, unless ordered otherwise by the
Judge on reasonable Cause. Hil. 14. G. 2.

A List of the Causes when so entered as aforesaid, A List of Causes
shall be made by the Marshal, and fixed up in some entered to be
public Place in the *Nisi Prius* Court, there to re- fixed up.
main during the whole Time of the Affizes.—
Same Rule.

If your Cause be made a *Remanet*, you apply to When Cause
the Associate for the Record, to which are annexed made a *Remanet*.
the *Venire Distringas*, and Pannel. Make the pro-
per Alterations of the Returns, and Day of the Sit-
tings therein; then carry the Record to the *Nisi*
Prius Office, to be re-sealed; and the *Venire*
and *Distringas* to the Seal Office; pay for re-
sealing each, One Penny: Then annex them
all

The Practising Attorney :

all together, and leave them again with the Associate, to whom pay for making Cause a Remanet 5s.—

C H A P. XLIII.

Of the Brief, Trial, &c.

THE Brief is Instructions to Council, for supporting the Party's Case in whose Behalf it is made up and delivered ; for calling Witnesses to prove or disprove such Matters as may benefit or prejudice the Client, and for properly conducting the Cause through the Course of the Trial ; and to this end it should contain the Names of the Parties, a Summary of the Pleadings, the Case truly stated, with such Observations thereon as may be judged necessary and proper ; and lastly, the Names of the Witnesses, with a short Mention (as an Index to the Case) of what they respectively know in Support thereof, that the Council may not be at a Loss to call the proper Witnesses, for Proof of particular Facts, as may be necessary. The Brief being delivered, and all previous Steps regularly settled, and the Cause thus standing for Trial, is by the Crier called on in Course. The Record is handed to the Judge to peruse, and observe the Pleadings, and what Issues the Parties are to maintain and prove, while the Jury is called ; who, as they appear, are sworn " well and truly to try the Issue joined between the Parties, and a true Verdict to give according to the Evidence," unless challenged by either Party. Challenges are of two Sorts, to the Array, and to the Polls. Challenges to the Array are

are at once an Exception to the whole Panel in which the Jury are arrayed, or set in Order by the Sheriff in his Return of the *Venire*; and they may be made on Account of Partiality, or some Default in the Sheriff, or his Under-Officer, who arrayed the Panel. Challenges to the Polls *in Capita* are, on some just Cause, Exceptions to particular Jurors. But supposing a sufficient Number, viz. twelve Jurors, to whom no Exception is made, to be sworn and ready to hear the Merits, in order to fix their Attention the closer to the Facts they are to try, the Pleadings are opened to them by Council, on that Side which holds the Affirmative of the Question in Issue; for Proof is always first required upon that Side which affirms the Matter in Question. The opening Council briefly informs them what has been transacted in the Court above the Parties, the Nature of the Action, the Declaration, the Plea Replication, and other Proceedings; and lastly, upon what Point the Issue is joined, which is there sent down to be determined, instead of which, formerly, the whole Record and Process of the Pleadings was read to them in English by the Court, and the Matter in Issue clearly explained to their Capacities. The Nature of the Case, and the Evidence intended to be produced, are next laid before them by Council; also on the same Side, and when their Evidence is gone through, the Advocate on the other Side opens the adverse Case, and supports it by Evidence; and then the Party which began is heard by way of Reply. When the Evidence is gone through on both Sides, the Judge, in the Presence of the Parties, the Council, and all others, sums up the whole to the Jury, omitting only superfluous Circumstances; observing wherein the main Question and particular Issue lies, stating what Evidence has been given to support it, with such Remarks as he thinks necessary for their Direction, and giving them his Opinion in Matters of Law arising upon that Evidence. The Jury,

The Practising Attorney:

Jury, after the Proofs are summed up, unless the Case be very clear, withdraw from the Bar, to consider of their Verdict; and in order to avoid Intemperance and causeless Delay, are to be kept without Meat, Drink, Fire, or Candle, unless by Permission of the Judge, until they are all unanimously agreed; when they return back to the Bar, and before they deliver their Verdict, the Plaintiff is bound to appear in Court, by himself, Attorney, or Council, in order to answer the Amercement, to which by the old Law he is liable, in case he fails in his Suit, as a Punishment for his false Claim. To be amerced; or *a mercie*, is to be at the King's Mercy, with regard to the Fine to be imposed in *Misericordia Domini, Regis pro falso Clamore suo*. The Amercement is refused, but the Form still continues; and if the Plaintiff does not appear, no Verdict can be given, but the Plaintiff is said to be nonsuit *non sequitur clamorem suum*. Therefore it is usual for a Plaintiff, when he or his Council perceives that he has not given Evidence sufficient to maintain his Issue, to be voluntarily nonsuited, or withdraw himself; whereupon the Crier is ordered to call the Plaintiff, and if neither he nor any Body for him appears, he is nonsuited, and the Jurors are discharged, the Action is at an End, and the Defendant shall recover his Costs. The Reason of this Practice is, that a Nonsuit is more eligible for the Plaintiff than a Verdict against him; for, after a Nonsuit, which is only a Default, he may commence the same Suit again for the same Cause of Action; but after a Verdict had and Judgment consequent thereupon, he is for ever barred from attacking the Defendant upon the same Ground of Complaint; but in case the Plaintiff appears, the Jury or their Foreman, delivers in their Verdict; which, if for the Plaintiff, they assess the Damages sustained by him, in consequence of the Injury whereon the Action is brought; which being taken down by the Associate on the

Back

Back of the Record, they are discharged, and thus ends the Trial of the Cause.

The Court Fees are paid by the Party who obtains a Verdict, except about 10s. 6d. paid by him against whom the Verdict is given; and are usually as follows:

In a Town Cause, Verdict for the	}	2	18	8
Plaintiff, _____				
When Cause referred, _____		2	7	10
On a Nonfuit, _____		2	1	0

The Court Fees in a Country Cause differ not much from the above.

C H A P. XLIV.

Of the Postea, and marking the Deliberatur thereupon.

THE Verdict of the Jury, whether for the Plaintiff or Defendant, or whatever is done subsequent to joining Issue, and awarding the Trial, is entered on the Back of the Record, and is called the *Postea*, *Afterwards*, (the first Word with which this Entry begins). If the Cause be tried at the Sitings in London and Middlesex, the Associate delivers the Record, &c. to the Party in whose Favour the Verdict is given, and he indorses the *Postea* from the Associate's Minutes on the Back of the Panel.—
If the Cause be tried at the Assizes, the Associate

U

keeps

keeps the Record till the Beginning of the next Term, and in the Interim indorses the *Postea* thereon himself, for which he receives his Fee at the Trial.

Postea for the Plaintiff on a Plea of non est factum in a Town Cause.

AFTERWARDS*, that is to say, on the Day and at the Place within contained†, before William Earl of Mansfield, the Chief Justice within named, John Way, Gent. being associated unto the said Chief Justice, by Force of the Statute in that Case made and provided; the within-named Robert Franks, came by his Attorney within contained; and the within-named Thomas Parker, although solemnly demanded, came not, but made Default‡: Therefore let the Jurors of the Jury within-mentioned be taken against him by Default; and the Jurors of that Jury being summoned, come; who, to say the Truth of the within Contents, being chosen, tried, and sworn, say upon their Oaths, that the within-mentioned Writing obligatory is the Deed of the within-named Thomas Parker, as the within-named Robert Franks has within declared against him. And they assess the Damages of the within-named Robert

* *Afterwards*—that is, after the Return of the *Venire*, and the awarding the *Disfringas*.

† *On the Day and at the Place, &c.*—i. e. the Day of *Nisi Prius*, and at the Place for holding the Sittings and Assizes; at which Time the Defendant is called to hear the Names of the Jurors that are to pass on the Inquest.

‡ *Came not, but made Default*—If the Defendant says nothing, when the Panel is called by way of Challenge to the Polls, or the Array, the Court proceeds to swear the Jury, and then it is suggested by the Entry of the *Postea*, that the Defendant, being solemnly called, came not, but made Default: Therefore it is ordered by the Court, that the Jury be taken or accepted of by the Court through his Default in not challenging them. This Default relates to nothing more for the Defendant and his Attorney might be there ready at the first calling of the Cause; and he loses no Advantage by such a supposed Defect but that he cannot challenge any of the Jurors after they are sworn.

Franks,

Franks by Occasion of the detaining that Debt ||, over and above his Costs and Charges, by him about his Suit in this Behalf expended, to 50*l.* and for those Costs to Forty Shillings.

AFTERWARDS, on the Day and Year, and at the Place within contained, before Sir Richard Aston, Knight, one of the Justices of our Lord the King, before the King himself, and Sir William Blackstone, Knight, one of the Justices of our Lord the King, of the Bench Justices of our said Lord the King, assigned to take the Affizes in the said County of Berks, according to the Form of the Statute in that case made and provided; the within-named John Robinson came by his Attorney within contained; and the within-named Richard Richardson, although solemnly demanded, came not, but made Default: Therefore let the Jurors of the Jury within-mentioned be taken against him by Default. And the Jurors of that Jury being summoned, came; who, to say the Truth of the within Contents, being chosen, tried, and sworn, say——(according to the foregoing or following Precedents.

Postea at the Affizes.

—— Say, upon their Oaths, that the within-named Richard Richardson did undertake and promise, in Manner and Form as the said John Robinson hath within complained against him. And they assess the said John Robinson his Damages, by Occasion of the not performing the within-mentioned Premises and Undertakings, over and above his Costs and Charges, by him about his Suit in this Behalf expended, to 40*l.* and for those Costs and Charges to Forty Shillings.

Postea for the Plaintiff in assumption.

|| *And they assess the Damage, &c.*—Where the Plaintiff prevails, the Jury always find some Damages that he has sustained, (or else he is nonsuited) which entitles him to his Costs of Suit; and such Damages are more or less as they see Cause for it. A Penny Damages in some Cases entitles him to Costs, but in some others he shall have no more Costs than Damages.

Postea on *Ni/*
debet for the
Plaintiff.

— Say upon their Oaths, that the within-named Richard Richardson, doth owe to the within-named John Robinson the 100*l.* within-mentioned, in Manner and Form as the said John Robinson within complains against him. And they assess, &c.

In Trespass for
Plaintiff.

— Say upon their Oath, that the within-named Richard Richardson is guilty of the Premises within laid to his Charge, in Manner and Form as the said John Robinson within complains against him : And they assess the said John Robinson his Damages by Occasion thereof, over and above his Costs and Charges, &c.

On Plene ad-
ministravit for
Plaintiff.

— Say upon their Oaths, that the said Richard Richardson hath, and on the Day of exhibiting the Bill of the said John Robinson, (if by Original say, On the Day of suing out of the Original Writ of the said John Robinson) within-written, to wit, on the first Day of June, (the Day mentioned in the Replication, that Defendant had Assets) in the 16th Year of the Reign of our Sovereign Lord the now King, had divers Goods and Chattels which were of the said Timothy, at the Time of his Death, in his Hands to be administered to the Value of the Debt within specified, whereof he might have made Satisfaction to the said John the within written Debt as the said John within by replying hath alledged ; and they assess the Damage of the said John, by Occasion thereof, besides his Costs and Charges by him, &c.

For Plaintiff on
non assumpsit
infra sex annos.

— Say upon their Oaths that the said Richard, within six Years next, before the within-written Day of exhibiting the within-specified Bill of the said John, (if by Original say *six Years next before the Day of suing out of the Original Writ of the said John*) to wit, on the within-written first Day of April,

April, in the Year of our Lord 1776, in the within-written Declaration specified, undertook in Manner and Form as the said John has within, by replying alledged. And they assess, &c.

—— Say upon their Oaths, that the within-named Richard is guilty of the within-written Trespass and Assault, as the said John within complains against him. And they assess, &c.

For Plaintiff in
Trespass and
Assault.

—— Say upon their Oaths, that the said Richard is guilty of the Trespass within-written, as the said John within complains against him, and they Assess, &c. And the said Jury further upon their Oaths say, that the said Thomas and William are not guilty of that Trespass as the said Thomas and William within, by pleading for themselves, have alledged. Therefore, &c.

One Defendant
guilty in Tres-
pass, the other
not.

—— Say upon their Oaths, that the said John did not pay to the said William the within Sum of 100^l. upon the within-written 10th Day of October, which upon that Day he ought to have paid, as the said William by replying has alledged. And they assess, &c.

For Plaintiff on
solvit ad diem.

—— Say upon their Oaths, that the said Richard is guilty of the Trespass and Ejectments within-written, in Manner and Form as the said John within complains against him. And they assess the Damage of the said John by Occasion thereof, over and above, &c.

For Plaintiff in
Ejectments.

As to the Trespass and Ejectment of one Moiety of the within-written Tenements, they say upon their Oath, that the said Richard is guilty thereof, as the said John within complains thereof against him. And they assess, (vide *Antea*).—And as to the Trespass and Ejectment of the other Moiety of the Tenements within written, (the said Jurors say upon their Oaths, that the said Richard is not guilty thereof, as the said Richard has within by Pleading alledged. Therefore, &c.

In Ejectments
guilty as to part,
not guilty as to
the residue.

—— There-

Non Suit in
Ejectment.

— Therefore the Jury whereof Mention is within made, is taken against him by Default: And the Jurors of that Jury being called, also come, and being elected, tried, and sworn, to speak the Truth of the Matters within contained, he the said Richard although solemnly called to appear, and by himself, his Council, or Attorney, to confess, lease, entry, and ouster, doth not come either by himself, his Council, or Attorney, nor confesseth Lease, Entry, and Ouster, but maketh Default: Therefore the said John doth not further prosecute his Bill (if by original, say, *doth not further prosecute his Writ.*)

Plaintiff non
Suit.

— And the Jurors of that Jury being summoned came, who to say the Truth of the within Contents, were chosen, tried and sworn; and after Evidence being given to them, of and upon the Issue within contained, went from the Bar of this Court to discourse of their Verdict, of and upon the Premises. and after the said Jury had discoursed and agreed among themselves, they came back to the said Bar to give their Verdict in this Behalf, upon which the said John being solemnly demanded, came not, nor did he further prosecute his said Bill, (if by original, say, *further prosecute his said Writ*) against the said Richard, therefore, &c.

Postea when a
Juror is with-
drawn.

— And the Jurors of that Jury being summoned, came, who to say the Truth of the within Contents, were chosen, tried, and sworn, upon which for certain Causes moving, as well the said Chief Justice (or *the said Justices*) as the Parties, William Jones, one of the Jurors of the said Jury was withdrawn from the Panel, and the Residue of the Jurors of that Jury were entirely discharged from giving any Verdict of and upon the within written Premises, &c.

For Defendant
not guilty in
Trespafs.

— Say upon their Oaths that the said Richard Richardson is not guilty of the Trespafs in the
Declar.

Declaration within specified, as the said Richard Richardson hath by his Pleading within alledged. Therefore, &c.

—— Say upon their Oaths, that the said Richard Richardson did not at any Time within six Years next before the Day of exhibiting the within specified Bill of the said John, (if by original say, *next before the Day of suing out of the original Writ of the said John*) undertake and promise in Manner and Form as the said Richard has within by Pleading alledged. Therefore, &c.

For Defendant
in non assumpsit
infra sex annos.

—— Say upon their Oaths, that the said Richard Richardson did not at any Time within six Years next before the Day of exhibiting the within specified Bill of the said John, (if by original say, *next before the Day of suing out of the original writ of the said John*) break and enter the House of the said John, nor take and carry away the Goods and Chattels within contained, as the said Richard has within by Pleading alledged. Therefore, &c.

For Defendant
in Trespass on
the Statute of
Limitation.

—— Say upon their Oath, that the said Richard, at the Time of exhibiting of the Bill of the said John, (if by original, say, at the Time of suing out of the original Writ of the said John) had fully administered all the Goods and Chattels, which were of the said Thomas, at the Time of his Death, in his Hands to be administered; and that he the said Richard has not, nor on the Day of exhibiting of the within specified Bill, (if by original, say, nor on the Day of suing out of the original Writ of the said John) or at any Time afterwards, had any Goods and Chattels, which were of the said Thomas, at the Time of his Death, in his Hands to be administered, wherewith he was able to pay the Debt within specified, or any Part thereof to the said John,

For the Defen-
dant in Plene
administravit.

John, as he in Bar of the said John has within by Pleading alledged.

For Defendant's ——— Say upon their Oaths, that the within
 Executor that named Charles Thompson the Testator, did not in
 his Testator non his life time undertake in Manner and Form as the said
 assumpsit. John has within declared against him. Therefore, &c.

For the Defen- ——— Say upon their Oaths, that the said Ri-
 dant non tub. in chard is not guilty of the Trespass in the Declaration
 Trespas. within specified, as the said Richard hath by his
 Pleading within alledged. Therefore, &c.

Of marking the — The Postea being ingrossed, must be taken to the
 deliberatur of Clerk of the Postea, Mr. Walter, also Clerk of the
 the Postea. Common Bails in the King's-Bench Office, who will
 mark a *Deliberatur* "delivered of Record" thereon,
 for which pay him 4d. after which get it stamped,
 and tax Costs as hereafter directed.

C H A P. XLV.

Of Judgment by Default.

IF the Defendant make Default in pleading, re-
 joining, returning the Paper or Demurrer Book
 and paying for the Entries, or for the Issue, or in
 any other Stage of the Proceedings (the Time for
 the respective Purpose being expired) the Plaintiff
 may immediately sign Judgment against him on such
 Default, which Judgment is either *final* or *Interlo-*
cutory. If the Action be for Recovery of the *specific*
Thing sued for, as in Debt for a Sum certain, the
 Judgment is absolutely complete and final; and
 therefore it is very usual in order to strengthen the
 Creditor's Security for the Debtor, to execute a War-
 rant of Attorney to some Attorney nominated by the
 Cre:

Creditor, empowering him to confess a Judgment by *nil dicit, cognovit Actionem*, or *non sum informatus* in an Action of Debt to be brought by the Creditor against the Debtor, for the specific Sum due, which Judgment when confessed, is absolutely complete and binding; but when the Action is for Recovery of *Damages*, a Jury must be called in to assess the Amount of them, by virtue of Writ of Inquiry awarded to the Sheriff of the County wherein the Action is brought, who thereupon sits as Judge and tries by a Jury, what Damages the Plaintiff hath really sustained; and when their Verdict is given, (which must assess *some* Damages) the Sheriff returns the Inquisition which is entered on the Manner of a *Postea*. In like Manner, when a Demurrer is determined for the Plaintiff upon an Action wherein *Damages* are recovered, the Judgment is also incomplete without the Aid of a Writ of Inquiry.

Make an *Incipitur* of your Entry, viz. Warrants of Attorney for the Plaintiff and Defendant, and the Memorandum before your Declaration, if the Action be by Bill, or a Part of your Declaration, if by Original, upon a King's-Bench Roll, and on a double half Crown stamped Sheet of Paper, *if your Judgment be final*, or on a treble penny stamped Paper, *if interlocutory*; this is called the Judgment Paper, and this with the Roll and Pleadings take to the Clerk of the Judgments in the King's-Bench Office, who will sign your Judgment and mark your Roll and Judgment Paper.

How to sign
Judgment by
Default.

After Judgment is signed, *if final*, you may immediately tax Costs and sue out Execution against the Defendant, and no Rule for Judgment need in this Case be given, *if interlocutory*, you give Notice of executing a Writ of Inquiry, and proceed thereupon as hereafter directed.

On an Action against two or more Defendants, one suffer Judgment by Default, and the other pleads to Issue, Judgment may be signed against the Defendant

The Practising Attorney:

defendant making Default, and the Plaintiff's Damages shall be assessed on the Trial of the Issue, for which Purpose a Venire is awarded *tam ad triandum quam inquirendum*.—Vide Entries of Judgments.

If Judgment on a Warrant of Attorney be not entered up within a Year and Day after the Date it cannot be done but by Motion on an Affidavit of the due Execution of the Warrant of Attorney, that the Defendant is alive, and the Debt undischarged, whereupon a Rule will be made which you file, when Judgment is signed.

Although a Judgment be strictly regular, yet if the Plaintiff hath not lost a Trial, the Court will in many Cases on Payment of Costs pleading to Issue, and accepting Notice of Trial within the Term, set aside the Judgment that the merits may be tried.

If there be any Irregularity in the Process or Pleadings before or after Judgment, it behoves the Defendant's Attorney to apply to the Court as soon as the Irregularity happens, for in many Instances where he hath lain by, and let the Plaintiff proceed and be at great Expence, the Court hath refused to assist the Defendant.

C H A P. XLVI.

Writ of Inquiry and Notice of executing the same.

What Notice of executing Writ of Inquiry to be given.

IF the Venue be laid in London or Middlesex, and the Defendant lives within forty Miles of London, the Plaintiff must give *eight* Days Notice of executing the Writ of Inquiry exclusive of the Day it is given; and

and if the Venue be laid in any other County, or the Defendant lives above 40 Miles from London, *fourteen* Days exclusive must be given, unless executed in the County where the Defendant lives, and the Notice be there given, in which Case *eight* Days exclusive are sufficient.

In King's Bench.

Notice of executing Inquiry.

Between { Robert Franks, Plaintiff.
and
Thomas Parker, Defendant.

Take Notice that a Writ of Inquiry of Damages will be executed in this Cause on Monday the 29th Day of July Instant, between the Hours of ten and twelve of the Clock, at the Guildhall, in King-street, Westminster, in the County of Middlesex. Dated, &c.
Yours, &c.

To Mr. C. D. } A. B. Plaintiff's Attorney.
Defendant's Attorney.

Countermand of Notice of executing Inquiry to be delivered *six* Days before the Day of executing the same, unless in a Town Cause, and the Defendant lives within forty Miles of London, or such Countermand be given in the Country in which Cases *two* Days are sufficient. What Notice Countermand to be given.

If the Plaintiff neglect to countermand his Notice in due Time, on an Affidavit on the Part of the Defendant, he will be allowed his Costs of the Day.

George the Third, &c. To the Sheriff of Middlesex, greeting. Whereas Robert Franks lately in our Court before us at Westminster, by Bill, without our Writ impleaded Thomas Parker, being in the Custody of the Marshal of the Marshalsea, before us for this
X 2

Writ of Inquiry by Bill.

The Practising Attorney :

this Cause, to wit, That whereas (here insert the whole Declaration from the Word whereas) to the Damage of the said Robert, of 50 l. as he saith; and such Proceedings were thereupon had in our said Court before us, that the said Robert ought to recover his Damages against the said Thomas; by reason of the Premises; but because it is unknown to our Court before us what Damages the said Robert hath sustained by the Means aforesaid. We therefore command you, that by the Oath of twelve good and lawful Men of your Bailiwick, you diligently enquire what Damages the said Robert hath sustained as well by means of the Premises as for his Costs and Charges by him about his Suit in this Behalf expended, and make appear to us at Westminster on Thursday next, after the Morrow of All Souls (the Return) the Inquisition, you shall thereupon make under your Seal, and the Seals of them, by whose Oath you shall take that Inquisition. And have there then this Writ, Witness, &c.

Lee.

Writ of Inquiry
by Original.

George the Third, &c, To the Sheriff of Middlesex, greeting. Whereas Edward Carpenter, late of, &c. was attached to be in our Court before us, to answer William Mason in a Plea; That whereas, &c. (the Declaration) to the Damage of the said William of 50 l. And such Proceeding, &c. (as in the Inquiry by Bill making it returnable on an Original Return, and leaving out the Word *then* in the Conclusion before the Teste.)

This Writ you ingross on a double twelve-penny stamped Piece of Parchment, and get sealed; it is not to be signed; indorse the Attorney's Name, and the Time and Place, when and where you have given Notice for the Execution of it, and then take it to Sheriff's Office, where it should be left two Days before the Execution, that the Sheriff may have Time to summon a Jury; but this is disregarded in Town, a Jury generally sitting in London, at Guildhall; in
Mid-

Middlesex, in Term, at Guildhall, Westminster; and in Vacation, at the Three Tons, in Brook-street, Holborn, between ten and twelve o'Clock daily; and you give Notice accordingly.

When the Day for executing your Inquiry comes, you attend the Sheriff's Deputy and the Jury, with Evidence to prove the Plaintiff's Demand, or the Damage sustained by him, and the Defendant may produce Witnesses on his Part in *Mitigation* of such Damages, for some Damages as is before said, they must assess, and at the Return call upon the Sheriff for the Inquisition, which is annexed to the Writ, and for which you give a Receipt, and then proceed as hereafter directed.—Pay executing Inquiry in London 1—7—4, and for every Witness sworn 4 *d*. In Middlesex and most other Counties 1—10—6.

C H A P. XLVII.

Rule for Judgment, stamping Postea, and Inquisition, taxing Costs, and signing final Judgment.

ON the Day in Bank, that is the Return Day of the Distringas or Inquiry, or afterwards within four Days after the End of the Term (for Rules given in that Time are entered, as of the last Day of the Term) a Rule for Judgment must be given by the Plaintiff with the Clerk of the Rules in the like manner as Rules to plead are given.

Franks	}	Rule on Postea or Inquisition,
agt		(as it may be.)
Parker.		A. B.

6th Nov. 1777.

Pay

The Practising Attorney :

Pay entering Rule 1 s. 10 d. This Rule expires in four Days exclusive after the giving thereof, Sunday or any other Day on which the Court doth not sit, not being accounted one, unless entered on the last Day of the Term, or within four Days after; till the Expiration of this Rule, final Judgment cannot be signed, and this Time is allowed, that if any Defect of Justice happened at the Trial by Surprise, Inadvertence, or Misconduct, the Party against whom the Verdict was given, may move in Arrest of Judgment, or for a new Trial, or may bring a Writ of Error, but no Rule for Judgment need be given when final Judgment is signed by Default, the Defendant in that Case tacitly confessing the Justice of the Plaintiff's Demand, nor by the Defendant on a Non-suit which is a Default of the Plaintiff in not prosecuting his Suit.

This Rule for Judgment being expired, and nothing done by the Defendant to avoid or delay Judgment, you get the Postea or Inquisition stamped with a double half Crown Stamp, and take it to the Master or Secondary of the King's-Bench, who will tax and allow the Plaintiff his Costs *de Incremento* thereon, and then final Judgment is said to be signed, and Execution may be sued out.

By the common Law there was no such Thing as Costs professedly allowed, though in Reality Costs were always considered and included in the Quantum of Damages in such Actions, where Damages were given. But because these Damages were frequently inadequate to the Plaintiff's Expences, the Statute of Gloucester (the first Statute which gave Costs *eo Namine*) orders Costs to be also added, and this is said to be the Original of Costs *de Incremento*, but no Costs were allowed the Defendant in any Shape till the Statutes of 23d Hen. VIII. c. xv. 4th Jac. I. c. iii. 8th and 9th W. III. and 4th and 5th Annæ, ch. 16. which very equitably gave the Defendant, if he prevailed, the same Costs as the Plaintiff would have had, had he recovered.

The

The King (or any Person suing to his Use) shall neither pay nor receive Costs, for besides that he is not included under the general Words of the Statutes it is his Prerogative not to pay them to a Subject, so it is beneath his Dignity to receive them. And it seems reasonable to suppose the Queen Consort participates of the same Privilege; for in Actions brought by her, she was not at the common Law obliged to find Pledges of Prosecution, nor could be amerced in Case there was Judgment against her. In two Cases an Exception also lies from paying Costs;—Executors and Administrators, when suing in the Right of the deceased shall pay none for the Statute of 23d Hen. VIII. c. xv. doth not give Costs to Defendants, unless where the Action supposeth the Contract to be made with on the Wrong done to the Plaintiff himself; and Paupers, that is, such as will swear themselves not worth 5*l.* are by Statute of 11th Hen. VII. c. 12. to have Original Writs and *Sub-pœnas gratis*, and Counsel and Attornies assigned them without Fee, and are excused from paying Costs when Plaintiffs by the Statute of 23d Hen. VIII. c. 15. but shall suffer other Punishment at the Discretion of the Judges; and it was formerly usual to give such Paupers, if non-suited, their Election, either to be whipped or pay the Costs, though that Practice is now disused. It seems however agreed, that a Pauper may recover Costs though he pays none, for the Counsel and Clerks are bound to give their Labour to *him*, but not to his Antagonist. To prevent also trifling and malicious Actions for Words for Assault, Battery, and Trespass, it is Enacted, by Statute of 43d Eliz. c. vi. 21 Jac. I. c. xvi. and 22d and 23d Car. II. c. iv. §. 136. that where the Jury who try any of these Actions shall give less than 40*s.* the Plaintiff shall be allowed no more Costs than Damages, unless the Judge before whom the Cause is tried, shall certify under his Hand on the Back of the Record, that an actual Battery (and not an Assault only) was proved, or that in Trespass the Freehold

hold or Title of the Land came chiefly in Question; also by Statute of 4th and 5th W. and M. c. 23. and 8th and 9th of W. III. c. xi. If the Trespass were committed in hunting or sporting by an inferior tradesman, or if it appear to be wilfully or maliciously committed, the Plaintiff shall have full Costs, though his Damages as assessed by the Jury, amount to less than 40s. Blac. Comm. V. 3. c. 24.

Formerly the Puisne Judge of the Court used to moderate and allow the Costs, and make a special Rule for the Payment of them, upon the Service whereof and Refusal of Payment, an Attachment was issued; but now it is become the Practise to refer the taxing of Costs to the Master or Secondary, and he has a discretionary Power to allow what is reasonable, and disallow what is otherwise; for such Costs only are to be allowed as have necessarily occurred in the Prosecution, or where one of the Parties has caused the other to be at extraordinary Charges.— And therefore it has been held that Costs ought not to be paid for putting off a Trial where no Fault was in the Party against whom it was moved: In like Manner no Costs shall be allowed for unreasonable Motions, nor for extraordinary Fees to Council, as retaining Fees, &c. nor extraordinary Expences on Witnesses at the Trial, nor paying them beyond what is reasonable for their Attendance, but for such Expences only, as the Party was necessarily put to in the Prosecution or Defence of the Suit, and hence arises the Difference in Costs between Party and Party, and between Attorney and Client, and therefore it is usual for the Party on whose Behalf Costs are taxed, to make an Affidavit of the extraordinary Expences he has been put to, which if reasonable the Master will allow.

C H A P. XLVIII.

*Of entering final Judgment on the Roll,
Docqueting, and carrying in the Roll.*

FINAL Judgment being signed, all the Proceedings had in the Cause, with the Judgment thereupon, are to be entered on a Roll, and filed in the Treasury Chamber, among the Records of the Court, to be referred to as Occasion may require; and for the better finding the same, a Docquet thereof must be left with the Clerk of the Judgments, who enters it in alphabetical Order by the Defendant's Surname, in a Book kept by him for that Purpose. To make this Docquet, you get a Number for your Roll from the *Nisi Prius* Office, Mr. Ways, in Carey-Street. Draw your Docquet Paper as under:

The Entry of A. B. Gent. of *Michaelmas*
Term, 18th Geo. III.

Middlesex, ff. Judgment in Case
(as it may be) between Robert Franks,
Plaintiff, and Thomas Parker, Defendant, for 40*l.* Damages, and Costs 18*l.* } Roll 543.

London, ff. Issue in Debt between
Richard Williams, Plaintiff, and John
Morgan, late of, &c. Defendant. } Roll 544.

Y

This

The Practising Attorney:

This, with your Roll, (which you Number at the Bottom) take to the Clerk of the Judgments, who will mark your Roll; pay docquetting 3s. then carry it to the *Nisi Prius* Office in Gray's Inn, where it is to be filed: Pay for each Warrant 4d. and they allow you 4d. for each Roll.

Issues and Judgments must be entered on the Roll in a fair strong Hand, with a Margin of an Inch at least; and a Space the Breadth of the Roll, at the Top, must be left to Bind them up, and at the Bottom sufficient Space, that the Writing may not be rubbed out. Hil. 1687. Rolls are to be wrote on both Sides, observing these Directions.

Rolls of Trinity, Michaelmas, and Hilary Terms, are to be brought in and filed before the Esioin Day of the subsequent Term; and those of Easter before the first Day of Trinity Term; or you pay post Term for filing the same. Mich. 5 Annæ.

Warrants of Attorney for the Plaintiff and Defendant, must be entered on every Judgment Roll or it is not to be received. E. 4. Ja. 2.

The Entry on the Roll on a Judgment after Verdict will be thus:

Michaelmas Term, in the Eighteenth Year of the Reign of King George the Third.

Plaintiff's Warrant of Attorney.

Middlesex, ss. **R**OBERT FRANKS puts in his Place A. B. his Attorney, against Thomas Parker, in a Plea of Trespas on the Case.

Defendant's Warrant of Attorney.

Middlesex, ss. **T**HE said Thomas Parker puts in his Place C. D. his Attorney, at the Suit of the said Robert Franks, in the Plea aforesaid.

Middle-

C H A P. XLVIII.

*Of entering final Punishment on the Roll,
Docqueting, and carrying in the Poll.*

FINAL Judgment being signed, all the Proceedings had in the Cause, with the Judgment thereupon, are to be entered on a Roll, and filed in the Treasury Chamber among the Records of the Court, to be referred to as Occasion may require; and for the better finding the same, a Docquet thereof must be left with the Clerk of the Judgments, who enters it in alphabetical Order by the Defendant's Surname, in a Book kept by him for that Purpose. To make this Docquet, you get a Number for your Roll from the *Nisi Prius* Office, Mr. Ways, in Carey-Street. Draw your Docquet Papar as under:

The Entry of A. B. Gent. of *Michaelmas*
Term, 18th Geo. III.

Middlesex, ff. Judgments in Case
(as it may be) between Robert Franks,
Plaintiff, and Thomas Parker, Defendant, } Roll 543.
for 40*l.* Damages, and Costs 18*l.*

London, ff. Issue in Debt between
Richard Williams, Plaintiff, and John
Morgan, late of, &c. Defendant, } Roll 544.

Y

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The Practising Attorney :

This, with your Roll, (which you number at the Bottom) take to the Clerk of the Judgments, who will mark your Roll ; pay docquetting 3s. then carry it to the *Nisi Prius* Office in Gray's Inn, where it is to be filed : Pay for each Warrant 4d. and they allow you 4d. for each Roll.

Issues and Judgments must be entered on the Roll in a fair strong Hand, with a Margin of an Inch at least ; and a Space the Breadth of the Roll, at the Top, must be left to bind them up, and at the Bottom sufficient Space, that the Writing may not be rubbed out. Hil. 1687. Rules are to be wrote on both Sides, observing these Directions.

Rolls of Trinity, Michaelmas, and Hilary Terms, are to be brought in and filed before the Effoin Day of the subsequent Term ; and those of Easter before the first Day of Trinity Term ; or you pay post Term for filing the same. Mich. 5 Anne.

Warrants of Attorney for the Plaintiff and Defendant, must be entered on every Judgment Roll or it is not to be received. E. 4. Ja. 2.

The Entry on the Roll on a Judgment after Verdict will be thus :

Michaelmas Term, in the Eighteenth Year
of the Reign of King George the Third.

Plaintiff's War-
rant of Attorney.

Middlesex, ss. **R**OBERT FRANKS puts in his Place A. B. his Attorney, against Thomas Parker, in a Plea of Trespass on the Case.

Defendant's War-
rant of Attorney.

Middlesex, ss. **T**HE said Thomas Parker puts in his Place C. D. his Attorney, at the Suit of the said Robert Franks, in the Plea aforesaid.

Middle-

Middlesex, ff. **B**E IT REMEMBERED, that on ^{The Issue,} Thursday next after the Morrow of All Souls, &c. (go on through the Issue which ends thus) The same Day is given to the Parties aforesaid, at the same Place. *Afterwards*, the Pro- ^{Process continued.} cess thereof being continued between the Parties aforesaid, of the Plea aforesaid, by the Jury aforesaid, being respited between them before our Lord the King at Westminster, until Friday next, after fifteen Days of St. Martin, (the Return of the *Dis-tringas*) unless the King's right-trusty and well-beloved William, Earl of Mansfield, his Majesty's Chief Justice, assigned to hold Pleas before the King himself, shall first come on Tuesday the 18th Day of November, (the Day of the Sittings) at Westminster Hall, in the County of Middlesex; or at Guildhall, in the City of London; — or at the Assizes say—Unless the Justices of our Lord the King, assigned to take the Assizes in the County aforesaid, first come on Monday the 8th Day of July, at Reading, in the County of Berks, (the Day and Place of holding the Assizes)—according to the Form of the Statute in such Case made and provided, for Default of the Jurors, because none of them did appear. At which Day, before our Lord the King at Westminster, the aforesaid Robert Franks comes by A. B. his Attorney aforesaid, and the said Lord Chief Justice—at the Assizes. And the said Justices of our said Lord the King—sent hither his—their—Record, had in these Words, to wit, *Afterwards*, ^{Postea.} that is to say, on the Day and at the Place within-contained, &c. (the *Postea* verbatim).—Therefore ^{Judgment} it is considered that the said Robert recover against ^{signed 3d Dec.} the said Thomas his said Damages, by the said Jury ^{1777, (the Day} in Form aforesaid assessed; and also 27*l.* (the Costs ^{you tax Costs).} taxed) for his Costs and Charges, by the Court of our said Lord the King, now here adjudged, of In-

crease to the said Robert, with his Assent, which Damages in the whole Amount to 40*l*. And the said Thomas in Mercy, &c.

ercy,

Write in the Margin as above *Judgment signed*, &c. and *Mercy*; but in Actions *Vi et armis*, you leave out the Words *And the said (Defendant)* in *Mercy*, &c. and *Mercy* in the Margin.

If the Cause be not tried within the Term next after that in which the Issue is joined, you must continue the *Venire* on the Roll by *Viccomes non misit breve*, as suppose the Issue joined in Hilary Term, and the Cause not tried till the Sittings after Easter, the Continuance on the Roll will be as follows:—The Issue ends—“The same Day (the Return of the first *Venire* in Hilary Term (is given to the Parties aforesaid in the same Place;” then add, “At which Day before our Lord the King at Westminster, came, the Parties aforesaid by their Attornies aforesaid; and the Sheriff of Middlesex did not return the said Writ, nor did he do any Thing thereupon. Therefore, as before, let a Jury come before our Lord the King at Westminster, on Wednesday next after fifteen Days from the Day of Easter, (the first Return of Easter Term) and who neither, &c. to recognize, &c. because as well, &c. the same Day is given to the Parties aforesaid at the same Place.” (If there are more Continuances necessary, enter them as above, making the *Venire* awarded therein returnable on the first Return of each Term, till you have thus brought the Cause down to the Term in which it is tried; and then go on with the Respite of the Jury, and Award of the *Disfringas*, thus:;) “Afterwards the Process thereof being continued between the Parties aforesaid, of the Plea aforesaid, by the Jury aforesaid, being respited, &c”. (as before.)

Entries

Entries of Judgments upon Verdict.

Therefore it is considered, that the said Robert recover against the said Thomas his Damages, by the said Jury in Form aforesaid assessed and also 20% for his Costs and Charges, by the Court of our said Lord the King, now here adjudged of Increase to the said Robert, by his Assent; which Damages in the whole amount to 50% and the said Thomas in Mercy, &c.

Judgment for Damages for the Plaintiff.

In Actions where the Recovery consists in Damages, as in Case, Trespass, &c. the Form of the Judgment does not vary according to the Cause of Action; but the above will be a Precedent in all such Actions.

Therefore it is considered, that the said William recover against the said John his said Debt, and the aforesaid Damages, by the said Jury in Form aforesaid assessed; and also 20% for his Costs and Charges, by the Court of our said Lord the King now here adjudged, of Increase to the said William, by his Assent; which Damages in the whole amount to 128% and the said John in Mercy, &c.

Judgment for Plaintiff in Debt.

Therefore it is considered, that the said William recover against the said John his Term yet to come, of and in the said Tenements, with the Appurtenances; and the said Damages assessed by the said Jury in Form aforesaid. And also 30% for his Costs and Charges, by the Court of our said Lord the King, now here adjudged of Increase to the said William, by his Assent, which Damages in the whole amount to 32%.

For Plaintiff in Ejectment.

Therefore

Judgment for the
Defendant on a
Nonsuit.

Therefore it is considered, that the said William take nothing by his said Bill (if by Original "by his said Writ") but that he be in Mercy of the Court for his false Clamour. And that the said John go thereof without Day. And it is further considered, that the said John recover against the said William 10*l*. 10*s*. for his Costs and Charges, laid out by him about his Defence, in this Behalf adjudged to the said John, by the Court of our said Lord the King, now here by his Assent, according to the Form of the Statute in such Case made and provided. And that the said John have Execution thereof.

Entries of Judgments by Default and Confession.

In entering Judgments by Default or Confession on the Roll, after the Warrants of Attorney, you begin with a Memorandum, (unless by Original) as before the Issue, and go on to the End of the Declaration; then follows the Defendant's Appearance, "And the said (Defendant) by C. D. his Attorney, comes and defends the Wrong and Injury, when, &c." the Imparlance, (if any) the Defendant's Default, or Confession and Judgment thereupon, according to the following Precedents.

If Judgment be signed for Want of a Plea, and the Appearance is entered, or common Bail filed Sec. Stat. the Defendant's Warrant of Attorney will be in Person thus:

Middlesex, ff. The said (Defendant) in Person, at the Suit of the said (Plaintiff) in the Plea aforesaid.

And the Entry of his Appearance must agree therewith. "And the said (Defendant) in his proper

per Person, comes and defends the Wrong and Injury, when, &c.

And the said John, by C. D. his Attorney, comes and defends the Wrong and Injury, when, &c. and saith that he cannot deny the said Action of the said William, nor but that he the said John did undertake in Manner and Form as the said William above complains against him; nor also but that the said William hath sustained Damage by Occasion of the not performing the said Promises and Undertakings to 50*l*. as the said William hath by his said Declaration above supposed. And upon this the said William prays Judgment; and the said Damages so acknowledged, together with his Costs and Charges, by him about his Suit in this Behalf expended, to be adjudged to him, &c. Therefore it is considered, that the said William do recover against the said John his said Damages to 50*l*. above acknowledged, and also 15*l*. for his Costs and Charges, by the Court of our said Lord the King, now here adjudged to the said William by his Assent, which said Damages in the whole amount to 65*l*. And the said John in Merey, &c.

Judgment by
cognovit actionem in Case.

And says, that he cannot deny but that the said Obligation is his Deed; nor but that he owes to the said William the said 100*l*. in Manner and Form as the said William above complains against him, &c. Therefore it is considered, that the said William do recover against the said John the said 100*l*. above acknowledged. And also, &c. (as before).

Cognovit Actionem in Debt on Bond.

And the said Thomas by C. D. his Attorney, comes and defends the Wrong and Injury, when, &c.—And the said Robert prays, that the said Thomas may answer to his the said Robert's Declaration, upon which the said Attorney of the said Thomas says

Judgment by
non sum informatus in Debt.

says that he is not informed (or instructed) by the said Thomas, to give any Answer for him the said Thomas, in the Premises, nor doth he say any Thing in Bar or Preclusion of the said Action of the said Robert, whereby the said Robert remains therein undefended against the said Thomas, &c. Therefore it is considered, that the said Robert recover against the said Thomas his said Debt, and also 63*s.* for his Damages which he hath sustained, as well by Occasion of the detaining that Debt, as for his Costs and Charges, by him about his Suit in this Behalf expended, by the Court of our Lord the King, now here adjudged to the said Robert by his Assent. And the said Thomas in Mercy, &c.

*Nil dicit in Debt
of the same
Term with the
Declaration.*

And the said John in his proper Person comes and defends the Wrong and Injury, when, &c. and prays Licence to imparle to the said Bill, and it is granted him, &c. And upon this a Day is given to the Parties aforesaid, before our Lord the King at Westminster, until Thursday next after fifteen Days of St. Hilary, (the Day the Rule to plead is out) to wit, to the said John, to imparle to the said Bill of the said William; and then to answer thereunto, &c. At which Day before our Lord the King at Westminster, comes the aforesaid William, by his Attorney aforesaid. And the said John, at that Day, although solemnly demanded, comes not, nor does he say any Thing in Bar or Preclusion of the said Action of the said William, by which, &c. (as in the Entry by Non sum informatus.)

*Nil dicit in Debt
with an Impar-
lance.*

And now at this Day, to wit, on Thursday next after eight Days of Saint Hilary (the first Day of the Term Judgment is signed) until which Day the said John had Licence to imparle to the said Bill of the said William, and then to answer thereunto, &c. comes before our Lord the King at Westminster, the aforesaid William by his Attorney aforesaid, and the
said

faid John, although at that Day solemnly demanded, comes not, &c. (as before.)

And the faid Thomas, in his proper Person comes and defends the Wrong and Injury, when, &c. And the faid Robert prays that the faid Thomas may answer to his faid Declaration, and upon this the faid Thomas prays Licence to imparle to the faid Bill of the faid Robert, until

Nil dicit in Case of the same Term with the Declaration.

next, after (the Day the Rule to plead is out) and it is granted to him, &c. the same Day is given to the faid Robert at the same Place, at which Day before our Lord the King at Westminster comes the faid Robert by his Attorney aforefaid, and the faid Thomas at that Day, although solemnly demanded, comes not, nor doth he say any Thing in Bar or Preclusion of the faid Action of the faid Robert, by which the faid Robert remains undefended against him, &c. wherefore the faid Robert ought to recover against the faid Thomas his Damages, by Occasion of the Premises, but because it is unknown to the Court of our Lord the King now here, what Damages the faid Robert hath sustained in this Case, by the Occasion aforefaid, it is therefore commanded to the Sheriff, that by the Oath of twelve good and lawful Men of his Bailiwick, he diligently inquire what Damages the faid Robert hath sustained, as well by Occasion of the Premises, as for his Costs and Charges by him about his Suit in this Behalf expended; and that he send the Inquisition which he shall thereupon take to our Lord the King at Westminster, on Wednesday next after eight Days of the Purification, under his Seal and the Seals of them by whose Oath he shall take the said Inquisition, together with the Writ of our said Lord the King to him thereupon directed, the same Day is given to the faid Robert at the same Place, at which Day before our Lord the King at Westminster comes the faid Robert by his Attorney aforefaid, and the Sheriff to wit,

Inquiry awar

Sheriff's Return

Sheriff of the County of Middlesex aforefaid, returned a certain Inquisition

Z

taken

The Practising Attorney:

Judgment.

taken before him at _____ in the said County, on the _____ Day of _____ in the 17th Year of the Reign of our Sovereign Lord George the III. now King of Great-Britain, &c. by the Oath of twelve good and lawful Men of his Bailiwick, by which it is found that the said Robert hath sustained Damage, by Occasion of the Premises, over and above his Costs and Charges, by him about his Suit, in this Behalf expended to 50*l.* and for those Costs and Charges to 40*s.* Therefore it is considered, that the said Robert do recover against the said Thomas his Damages aforesaid, by the said Inquisition above found: And also 9*l.* 10*s.* for his said Costs and Charges, by the Court of our said Lord the King now here adjudged, of Increase to the said Robert, by his Assent, which said Damages in the whole amount to 61*l.* 10*s.* and the said Thomas in Mercy, &c.

Nil dicit in Case
with an Impar-
lance.

And now at this Day, to wit, on Thursday next, after eight Days of St. Hilary (the first Day of the Term Judgment is signed) in this same Term, to which Day the said Thomas had Licence to imparle to the said Bill, and then to answer, &c. before our Lord the King at Westminster comes the said Robert by his Attorney aforesaid, and prays that the Thomas may answer his said Declaration: And the said Thomas although at that Day solemnly required, comes not, nor doth he say any Thing in Bar or Preclusion of the said Action of the said Robert whereby the said Robert remains thereof undefended against him, wherefore the said Robert ought to recover against the said Thomas his Damages, by Occasion of the Premises, but because, &c. (as the last.)

Non sum infor-
matus in Case.

And the said Edward by C. D. his Attorney comes and defends the Wrong and Injury when, &c. And the said Henry prays that the said Edward may answer to his the said Henry's said Declaration, whereupon the said Attorney of the said Edward says, that he is not instructed by the said Edward his Client to give any

any Answer for him to the said William in the Premises, nor doth he say any Thing in Bar or Preclusion of the said Action of the said Henry, whereby the said Henry remains therein undefended against the said Edward, wherefore the said Henry ought to recover, &c. (as the Judgment by Nil dicit in Case.)

And the said Timothy inasmuch as the said Elizabeth by her Plea doth not deny but that the said Writing obligatory in the Deed of the said Stephen, nor but that the said Debt contained in the same Writing obligatory is a true and just Debt yet unpaid and forasmuch as the subject Matter above pleaded by the said Elizabeth saith nothing in Bar or Denial of the said Action of the said Timothy, but that she hath no Goods or Chattels in her hands unadministered, which were of the said Stephen, at the Time of his Death, and for that he said Timothy is not yet advised but that the said Plea of the said Elizabeth may be true, he prays Judgment for his said Debt by him above demanded, to be levied of the Goods and Chattels, which were of the said Stephen, at the Time of his Death, that shall hereafter come to the Hands of the said Elizabeth to be administered. Therefore it is adjudged, that the said Timothy do recover against the said Elizabeth his said Debt, to be levied of the Goods and Chattels which were of the said Stephen, at the Time of his Death that shall hereafter come to the Hands of the said Elizabeth to be administered. And the said Elizabeth in Mercy, &c.

Judgment of Assets in futuro after plene administravit pleaded.

Judgment,

Upon plene administravit the Plaintiff may immediately take Judgment of Assets in futuro of which it is usual to give the Defendants Attorney Notice on being served with a Rule to reply.

And the said J. S. by D. G. his Attorney, and the said T. by T. M. his Attorney, and the said M. by R. B. his Attorney, and the said R. in his proper Person come and defend the Force and Injury, when, &c. And the said J. S. T. and M. say, that they are

Plea non cul. by three Defendants.

The Practising Attorney :

Issue thereupon.
Judgment by nil
dicit against the
4th Defendant.

Unica Taxatio.

Venire facias
tam ad trian-
dum quam in-
quirendum.

Process continu-
ed.

Nisi prius.

in no wise guilty of the Trespases, Assaults, and Imprisonments above-laid to their Charge, as the said J. T. above complains against them, and of this they put themselves upon the Country. And the said J. T. doth the like : And the said J. T. prays that the R. may answer his said Bill, and thereupon the said R. prays leave to imparle until Friday next after eight Days of the Purification (Day the Rule to plead expires) and it is granted to him, &c. The same Day is given to the said J. T. at the same Place, &c. at which Day before our Lord the King at Westminster comes the said J. T. by his Attorney aforesaid ; and the said R. at that Day, though solemnly required, comes not, nor does he say any Thing in Bar or Preclusion of the said Action of the said J. T. whereby the said J. T. remains therein undefended against the said R. wherefore the said J. T. ought to recover against the said R. his Damages by him sustained, by reason of the Trespases, Assault and Imprisonment aforesaid ; but because it is convenient that there be but one Taxation of Damages in this Cause, therefore to the Assessment of the Damages against the said R. let all Inquiry thereof cease till the Trial of the above Issue joined between the said J. T. and the said J. S. T. and M. And as well to try the Issue aforesaid as to inquire what Damages the said J. T. hath sustained, by reason of the Trespases, Assaults, and Imprisonment aforesaid, let a Jury come before the Lord the King at Westminster on Friday next after eight Days of the Purification, and who neither, &c. to recognize, &c. because as well, &c. the same Day is given to the Parties aforesaid at the same Place. Afterwards the Process being continued between the Parties aforesaid, of the Plea aforesaid, by the Jury aforesaid, being respited before our Lord the King at Westminster until Wednesday next after 15 Days from the Day of Easter, unless his Majesty's Justices assigned to hold the Assizes in the said County, shall first come on Monday the 15th Day of March at Maidstone in the County aforesaid, according to the Form of the Statute in that Case made and provided, for Default of the Jurors,

rors, because none of them did appear; at which Day ^{Day in Bank.}
 before our Lord the King at Westminster comesthe
 said J. T. by his Attorney afore said, and the said
 Justices of the said Lord the King sent here the
 said Record had in these words, to wit; afterwards ^{Postea.}
 upon the Day and at the Place within contained, be-
 fore Sir L. C. Knight, one of the Barons of his Ma-
 jesty's Court of Exchequer, and W. W. Serjeant at
 Law, Justices of our said Lord the King, appointed
 to take the Affizes of the County of Kent, according
 to the Form of the Statute in that Case made and
 provided, came, as well the within-named J. T. by
 his Attorney within-named, as the within-named
 J. S. T. S. and M. L. by their several Attornies
 within-named, and the Jurors of the Jury within-
 mentioned, being chosen, tried, and sworn to, speak
 the Truth of the Matters within contained, say upon
 their Oath that the said J. S. and T. are guilty of the
 Trespasses, Assaults, and Imprisonment; in Manner ^{Verdict for the}
 and Form as the said J. T. by his Declaration within ^{Plaintiff against}
 complains against them, and they assess the Damages ^{two Defendants.}
 of the said J. T. on the within-wrttten Occasion be-
 sides his Costs and Charges, by him about his Suit
 in this Behalf expended, against the said J. S. and
 T. S. to 18 s. 4 d. and for his Costs and Charges to
 other 18 s. 4 d. And the said Jurors upon their said ^{Damages assessed}
 Oath further say, that the said J. T. hath sustained ^{against the De-}
 Damage on Occasion of the said several Trespasses, ^{endant suffering}
 assaults, and Imprisonments within committed by the ^{Judgment by de-}
 said R. S. over and above his Costs and Charges by ^{fault.}
 him laid out about his Suit, in that Behalf to one
 Shilling; and for those Costs and Charges to one
 other Shilling. And the Jurors afore said, upon their ^{Verdict against}
 said Oath further say, that the within-named M. L. ^{the Plaintiff for}
 is in no wise guilty of the said several Trespasses, Af- ^{the other Defen-}
 faults, and Imprisonments within laid to his Charge, ^{dant.}
 in Manner and Form as the said J. T. by his said
 Declaration within complains against him, as by him
 the said M. in his within written Plea his in that Be-
 half alledged. Therefore it is considered, that the ^{Judgment.}
 said J. T. do recover against the said J. S. and T. S.
 his

The Practising Attorney.

Costs de In-
cre-
mento.

his said Damages by the said Jury, in Form aforesaid, assessed against them to thirty-six Shillings and eight-pence; and against the said R. S. his said Damages by the said Jury in Form aforesaid, assessed to two Shillings; and also against them the said J. S. T. S. and R. S. 16 *l.* by the said Court of our said Lord the King, now here adjudged to the said J. T. with his Assent for his Costs and Charges aforesaid, by Way of Increase. It is also considered, that the said J. S. be amerced for his false Claim against the said M. L. for the said several Trespasses, Assaults, and Imprisonments, whereof the said M. L. is above acquitted. And that the said M. L. go thereof without Day, &c.

If the Roll be already carried in which it frequently is after Issue joined, and before the Trial, and which the Defendant may compel the Plaintiff to do by serving him with a Rule to enter the Issue; you carry the Postea or Inquisition with the Master's Allocatur of Costs thereupon to the Clerks at the Nisi Prius Office, and they will enter up the Judgment on the Roll.—Vide Non Profs and Judgment as in the Case of a Non-Suit for Precedents of Judgment in those Cases.

C H A P. XLIX.

Execution.

AN Execution is a judicial Writ, grounded on the Judgment of the Court from whence it issues; and is supposed to be granted at the Request of the Party at whose Suit it is, to give him Satisfaction of the Judgment which he hath obtained. There are three Sorts of Execution, commonly in Use at th Time, for the obtaining Satisfaction of Deb^t, D mages, and Costs, viz.

1. A Capias ad Satisfaciendum against the Body of the Defendant only.
2. A Fieri Facias against the Goods and Chattels of the Defendant only, and
3. An Elegit against the Goods and Chattels (except Oxen and Beasts of the Plough) and also one half of the Defendant's Lands to be holden by the Plaintiff, at an Estimate made thereof by the Sheriff, until the Debt or Damages and Costs are satisfied.

Capias ad Satisfaciendum.

The Intent of this Species of Execution is to imprison the Body of the Debtor, 'till Satisfaction be made of the Debt, Costs, and Damages, and therefore it does not lie against any privileged Persons, Peers, or Members of Parliament, nor against Executors, Administrators, or other Persons, than such as are sued in their own Right, and not in Right of a third Person. If an Action be brought against Husband and Wife for the Debt of the Wife when sole, and the Plaintiff recovers Judgment, the Capias ad Satisfaciendum shall issue, to take both Husband and Wife in Execution; but if the Action were originally brought against herself when sole, and pending the Suit, she marries, the Capias shall be awarded against her only, and not against her Husband, yet if Judgment be recovered against an Husband and Wife for the Contract, nay even for the personal Misbeviour of the Wife, during her Coverture, the Capias shall issue against the Husband only.

The Writ of Capias ad Satisfaciendum is an Execution of the highest Nature, insomuch that it deprives a Man of his Liberty, till he makes the Satisfaction awarded; and therefore when a Man is once taken

taken in Execution upon this Writ, no other Process can be sued out against his Lands or Goods only by Statute of 21st Jac. I. c. 24. If the Defendant dies while charged in Execution upon this Writ, the Plaintiff may after his Death, sue out new Execution against his Lands, Goods, or Chattels; the Writ is directed to the Sheriff commanding him to take the Body of the Defendant, and have him at Westminster on a Day therein named, to make the Plaintiff Satisfaction for his Demand; and if he does not then make Satisfaction, he must remain in Custody 'till he does. This Writ may be sued out as may all other executory Processes for Costs against a Plaintiff as well as a Defendant, when Judgment is had against him.

When a Defendant is once in Custody upon this Process, he is to be kept *in arcta et salva Custodia*; and if he be afterwards seen at large, it is an *Escape*, and the Plaintiff may have an Action thereupon against the Sheriff for his whole Debt. For though upon Arrests or what is called *Mefne Process*, being such as intervenes between the Commencement and End of a Suit, it is sufficient, if the Sheriff produce the Defendant in Court, to answer the Plaintiff at the Return of the Writ; yet upon taking in Execution, he could never give any Indulgence, for in that Case Confinement is the whole of the Debtor's Punishment, and of the Satisfaction made to the Creditor. Escapes, are either voluntary or negligent; voluntary are such as are by the express Consent of the Keeper, after which he never can retake his Prisoner again, (though the Plaintiff may retake him at any Time, but the Sheriff must answer for the Debt; negligent Escapes are where the Prisoner escapes without his Keeper's Knowledge or Consent, and then upon fresh Pursuit the Defendant may be retaken, and the Sheriff will be excused if he has him again before any Action brought against him for the Escape. A Rescue of a Prisoner *in Execution*, either going to Gaol or in Gaol, or a Breach of Pri-
son

son will not excuse the Sheriff from being guilty of and answering for the Escape, for he ought to have sufficient Force to keep him, seeing he may command the Power of the County. But by Statute of 32d George II. c. 28. if a Defendant charged in Execution for any Debt less than 100 *l.* will surrender all his Effects to his Creditors, (except his Apparel, Bedding, and Tools of his Trade, not in the whole amounting to the Value of 10 *l.*) and will make Oath of his punctual Compliance with the Statute, the Prisoner may be discharged, unless the Creditor insists on detaining him, in which Case he shall allow him 2 *s.* 4 *d.* per Week to be paid on the first Day of every Week, and on Failure of regular Payment the Prisoner shall be discharged; yet the Creditor may at any future Time have Execution against the Lands and Goods of the Defendant, though never more against his Person.

George the Third, &c. To the Sheriff of Middlesex, greeting. We command you to take John Robinson, (add the Defendant's Addition, if the Action be by Original) if he may be found in your Bailiwick, and him safely keep, so that you may have his Body before us at Westminster, on Monday next, after eight Days of Saint Hilary, (if by Original, say, "so that you may have his Body before us, in eight Days of Saint Hilary, wheresoever we shall then be in England.") to satisfy William Richardson one hundred Pounds Debt, which the said William, lately in our Court before us at Westminster, recovered against the said John, and also 10 *l.* which in our said Court before us at Westminster, were adjudged to the said William for his Damages which he sustained, as well by Occasion of the detaining the said Debt, as for his Costs and Charges by him about his Suit in that Behalf expended, whereof the said John is convicted, as appears to us of Record; and have there *then* (if by Original, leave out the Word *then*) this Writ. Witness, &c. Lec.

Ca. Sa. in Debt.

The Practising Attorney:

Ca. Sa. in Case. If in Case upon Promise say, "To satisfy William Richardson 100*l.* which the said William, lately in our Court before us at Westminster, recovered against the said John, for his Damages which he had sustained, as well by Occasion of the not performing certain Premises and Undertakings lately made by the said John to the said William, as for his Costs and Charges, &c. as before."

Ca. Sa. on a non Profs. George, &c. To the Sheriffs of London, greeting. We command you, that you take William Richardson, if he shall be found in your Bailiwick, and him safely keep, so that you may have his Body before us at Westminster, on Monday next, after eight Days of Saint Hilary (if by Original, observe the Directions in the first Capias) to satisfy John Robinson of 4*l.* 4*s.* which in our said Court before us at Westminster, were adjudged to the said John, according to the Form of the Statute in that Case lately made and provided, for his Costs and Charges by him sustained, about his Defence, in appearing to a certain Writ of Lat. (or whatever Writ it be) prosecuted against the said John, at the Suit of the said William, and thereupon the said William did not afterwards further prosecute that Writ, as appears to us of Record. And have there *then* this Writ. Witness, &c.

Lee.

Fieri Facias.

The next Species of Execution is against the Goods and Chattels of the Defendant, and is called a Fieri Facias, from the Words in it where the Sheriff is commanded *Quod Fieri Faciat de bonis*, that he cause to be made of the Goods and Chattels of the Defendant, the Sum or Debt recovered. This lies as well against privileged Persons

sons, Peers, &c. as other common Persons, and against Executors or Administrators, with regard to the Goods of the deceased. The Sheriffs may not break open any outer Doors to execute either this or the former Writ, but must enter peaceably, and may then break open any inner Door belonging to the Defendant, in order to take the Goods, and he may sell the Goods and Chattels (even an Estate for Years, which is a Châttel real) of the Defendant's 'till he has raised enough to satisfy the Judgment and Costs, first paying the Landlord of the Premises upon which the Goods are found, the Arrears of Rent then due, not exceeding one Year's Rent in the whole. If Part only of the Debt be levied on a Fieri Facias, the Plaintiff may have a Capias ad Satisfaciendum for the Residue.

George, &c. To the Sheriff of Middlesex, ^{Fieri Facias in} Greeting: We command you, that of the Goods ^{Cafe.} and Chattels of John Robinson, in your Bailiwick, you cause to be made 100l. which William Richardson, lately in our Court, before us at Westminster, recovered against the said John, for his Damages which he had sustained, as well by means of the not performing certain Promises and Undertakings lately made by the said John, to the said William, as for his Costs and Charges by him about his Suit in that Behalf expended, whereof the said John is convicted, as appears to us of Record, and have that Money before us at Westminster, on Monday next, after eight Days of St. Hilary, (if the Action be by Original say, And have that Money before us in eight Days of St. Hilary, where-soever we shall then be in England) to render to the said William for his Damages aforesaid, and have there *then* this Writ. Witness, &c.

Lee.

If in Debt you say, " You cause to be made 100l. in Debt, which William Richardson, lately in our Court,

A a 2

before

The Practising Attorney:

Ca. Sa. in Case. If in Case upon Promise say, "To satisfy William Richardson 100*l.* which the said William, lately in our Court before us at Westminster, recovered against the said John, for his Damages which he had sustained, as well by Occasion of the not performing certain Premises and Undertakings lately made by the said John to the said William, as for his Costs and Charges, &c. as before."

Ca. Sa. on a non Pross. George, &c. To the Sheriffs of London, greeting. We command you, that you take William Richardson, if he shall be found in your Bailiwick, and him safely keep, so that you may have his Body before us at Westminster, on Monday next, after eight Days of Saint Hilary (if by Original, observe the Directions in the first Capias) to satisfy John Robinson of 4*l.* 4*s.* which in our said Court before us at Westminster, were adjudged to the said John, according to the Form of the Statute in that Case lately made and provided, for his Costs and Charges by him sustained, about his Defence, in appearing to a certain Writ of Lat. (or whatever Writ it be) prosecuted against the said John, at the Suit of the said William, and thereupon the said William did not afterwards further prosecute that Writ, as appears to us of Record. And have there *then* this Writ. Witness, &c.

Lcc.

Fieri Facias.

The next Species of Execution is against the Goods and Chattels of the Defendant, and is called a *Fieri Facias*, from the Words in it where the Sheriff is commanded *Quod Fieri Faciat de bonis*, that he cause to be made of the Goods and Chattels of the Defendant, the Sum or Debt recovered. This lies as well against privileged Persons

sons, Peers, &c. as other common Persons, and against Executors or Administrators, with regard to the Goods of the deceased. The Sheriffs may not break open any outer Doors to execute either this or the former Writ, but must enter peaceably, and may then break open any inner Door belonging to the Defendant, in order to take the Goods, and he may sell the Goods and Chattels (even an Estate for Years, which is a Chattel real) of the Defendant's 'till he has raised enough to satisfy the Judgment and Costs, first paying the Landlord of the Premises upon which the Goods are found, the Arrears of Rent then due, not exceeding one Year's Rent in the whole. If Part only of the Debt be levied on a Fieri Facias, the Plaintiff may have a Capias ad Satisfaciendum for the Residue.

George, &c. To the Sheriff of Middlesex, *Fieri Facias in*
Greeting: We command you, that of the Goods *Cafe.*
and Chattels of John Robinson, in your Bailiwick,
you cause to be made 100l. which William Richardson, lately in our Court, before us at Westminster, recovered against the said John, for his Damages which he had sustained, as well by means of the not performing certain Promises and Undertakings lately made by the said John, to the said William, as for his Costs and Charges by him about his Suit in that Behalf expended, whereof the said John is convicted, as appears to us of Record, and have that Money before us at Westminster, on Monday next, after eight Days of St. Hilary, (if the Action be by Original say, And have that Money before us in eight Days of St. Hilary, where-soever we shall then be in England) to render to the said William for his Damages aforesaid, and have there *then* this Writ. Witness, &c.

Lee.

If in Debt you say, " You cause to be made 100l. in Debt,
which William Richardson, lately in our Court,

A a 2

before

The Practising Attorney:

before us at Westminster, recovered against him, and also 5l. which in our same Court were adjudged to the said William for his Damages, which he sustained as well by occasion of the detaining that Debt, as for his Costs and Charges by him about his Suit in that Behalf expended, whereof the said John is convicted, as appears to us of Record, and have you that Money before us on Monday next, after eight Days of St. Hilary, (if by Original, make a suitable Return) to render to the said William for his Debt and Damages aforesaid, and have there *then* this Writ, &c.

Lee.

Covenant.

If in Covenant say, "Which he sustained as well by means of the breaking a certain Covenant lately made betwixt the said William and the said John, as for his Costs and Charges, &c."

After a Scire Facias.

If you make out a Ca. Sa. or Fi. Fa. after a Sci. Fa. has issued, after the Words "As it appears to us of Record," add, "And whereupon in our said Court, before us at Westminster, it is considered, that the said William have Execution against the said John, of the Damages aforesaid, (or Debt and Damages aforesaid, according to the Action) by the Default of the said John, and have you that Money, &c."

Blank Ca. Sa. and Fi. Fas. may be had at the Stationers; they are neither to be signed; sealing each, 7d.

Elegit.

The third Species of Execution is by Writ of Elegit, which is a judicial Writ, given by the Stat. Westm. 2. 13. Ed. I. c. 18. either upon a Judgment for a Debt or Damages, or upon a Forfeiture of

of a Recognizance taken in the King's Court. By the Common Law a Man could only have Satisfaction of Goods, Chattels, and the present Profits of Lands, by the last mentioned Writ of *Fieri Facias*, and by Writ of *Levari Facias*, (a Species of Execution little in Use at present, except against Ecclesiastics) but not the Possession of Lands themselves. By the Writ of *Elegit*, (so called because it is the Choice or Election of the Plaintiff whether he will sue out this Writ, or one of the former) the Defendant's Goods and Chattels are not sold, but only appraised, and all of them (except Oxen and Beasts of the Plough) are delivered to the Plaintiff at such reasonable Appraisement and Price, in Part of Satisfaction of his Debt. If the Goods are not sufficient, then the Moiety or one half of his Freehold Lands which he had at the Time of the Judgment given, whether held in his own Name, or by any other in Trust for him, are also to be delivered to the Plaintiff to hold 'till out of the Rents and Profits thereof the Debt be levied, or 'till the Defendant's Term be expired, as 'till the Death of the Defendant, if he be Tenant for Life, or In Tail. During this Period the Plaintiff is called Tenant by *Elegit*; Copyhold Lands are not liable to this Execution. This Execution or seising of Lands by *Elegit* is of so high a Nature, that after it the Body of the Defendant cannot be taken, but if Execution can only be had of the Goods, because there are no Lands, and such Goods are not sufficient to pay the Debt, a *Capias ad Satisfaciendum* may then be had after the *Elegit*, for such *Elegit*, is in this Case no more in Effect than a *Fi. Fa.* so that Body and Goods may be taken in Execution, or Lands and Goods, but not Body and Land too, upon any Judgment between Subject and Subject, by the Course of the Common Law. Black. Com. Vol. 3.

Elegit in Debt.

George the Third, &c. To the Sheriff of Middlesex, Greeting: Whereas William Richardson, lately in our Court, before us at Westminster, by Bill without our Writ, and by the Judgment of the same Court recovered against John Robinson, 100 l. of Debt, and also 63 s. for his Damages, which he sustained as well by means of detaining the said Debt, as for his Costs and Charges by him about his Suit, in that Behalf expended, whereof the said John is convicted, as appears to us of Record; and afterwards the said William came in our Court before us, and chose all the Goods and Chattels of the said John, except the Oxen and Beasts of his Plough, and also a Moiety of all and singular the Lands and Tenements of the said John, in your Bailiwick, to be delivered to him according to the Form of the Stat. in that Case made and provided; and until the said Debt and Damages shall be thereupon fully levied, we therefore command you, that all the Goods and Chattels of the said John, in your Bailiwick, except the Oxen and Beasts of his Plough, and also a Moiety of all the Lands and Tenements of the said John, in your Bailiwick, whereof the said John on the 13th Day of January last, on which Day the said Judgment was given, or ever afterwards was seized, you cause to be delivered without Delay to the said William, by a reasonable Price and Extent to hold the said Goods and Chattels, and also to hold the Moiety of the said Lands and Tenements as his free Tenements to him and his Assigns, according to the Form of the said Stat. until the said Debt and Damages shall be thereupon fully levied and that you make appear to us at Westminster, on Monday next after the Morrow of the Ascension, under your Seal, and the Seals of them by whose Oath you shall make the said Extent and Appraisement, in what Manner you shall have executed this our Writ, and that you have there then this Writ. Witness, &c.

Lee,

An Elegit is both signed and sealed; pay 1s. 8d. signing; sealing, 7d.

C H A P. L.

Of entering Satisfaction of Record.

Satisfaction being obtained of any Judgment, an Entry thereof on the Record ought regularly to be made to discharge the same, or the Judgment apparently continues in Force against the Party convicted thereon, and Execution may within twenty Years after Recovery of such Judgment be issued out, though at the Peril of him suing out the same. And for this Purpose the Party making Satisfaction, may demand of the other a Warrant or Authority from him, directed to some Attorney of the Court wherein the Judgment is recovered, authorizing such Attorney to enter up Satisfaction, which is done in the following Manner. Write your Satisfaction Piece on a Slip of unstamped Parchment in the Form of a Bail Piece thus.

Michaelmas Term, 18th George III.

Lee.

Middlesex, ff. Satisfaction is acknowledged between William Richardson, Plaintiff, and John Robinson, Defendant, in a Plea of Debt for 200 l. and Costs 63 s.

Judgment entered of Trinity Term. 17th George III. Roll 760.

A. B. Attorney for the Plaintiff.
10th Nov. 1777.

This

This Satisfaction Piece take to the Clerk of the Judgments in the King's-Bench Office, and he will make an Entry thereof in his Book of Remembrances, and deliver the same over to the Clerk of the Treasury, who will make the proper Entry on the Roll.—Pay in Term 3 s. in Vacation

Entry of Satisfaction.

Afterwards, to wit, on Wednesday next after the Morrow of All-Souls in *Michaelmas* Term in the 18th Year of the Reign of our Sovereign Lord George the Third, now King of Great-Britain, &c. at Westminster cometh the aforesaid William, by his Attorney aforesaid, (or by A. B. his Attorney) and acknowledgeth himself to be satisfied by the said John, of the Debt, Damages, Costs, and Charges aforesaid: Therefore the said John is thereupon acquitted of the Debt, Damages, Costs and Charges aforesaid, &c.

CHAP. LI.

Of Proceeding against the Bail.

THE Bail we may remember stipulate in this triple Alternative, That the Defendant shall, if condemned in the Action, satisfy the Plaintiff his Debt and Costs, or that he shall surrender himself a Prisoner, or that they will pay it for him: And when Judgment is obtained, they stand liable to perform this Contract, and may be compelled so to do; but before any immediate Proceeding can be had against them, a *Capias ad Satisfaciendum* must be sued out against the Defendant, and *Non est Inventus* thereon returned by the Sheriff, for the Bail are liable only on Failure by him. No Execution but a *Capias Satisfaciendum* has Effect to fix the Bail,

Bail, all others aiming at Satisfaction by a Seizure of the Defendant's Property, whereas this Writ amounts to a Demand on him to surrender himself a Prisoner, which if not done by the Return thereof the Bail (who may on their own Authority take the Defendant into Custody, and by surrendering him discharge themselves) having it is presumed made their Election, by neglecting to perform either of the first, become liable to pay the Debt and Costs, according to the last Branch of the Alternative.—The Recognizance being thus forfeited, the Plaintiff may either bring his Action of Debt thereon, or proceed by *Scire Facias* against the Bail, whereby they are commanded to shew Cause why the Plaintiff should not have Execution against them for his Debt and Damages, and if no sufficient Cause be shewn, the Plaintiff shall have Judgment and Execution against the Bail; yet the Court will *ex Gratia* discharge them on a Surrender of the Defendant, at any Time before the Return of the *Scire Facias*, or Alias if an Alias be sued out which is necessary, unless the Bail have Notice, and a *Scire Feci* be returned on the first Writ; also if the Plaintiff bring an Action on the Recognizance, the Defendant may be surrendered any Time within eight Days after the Return of the Writ issued against the Bail, and Notice of such Surrender having been given, the Court in either of these Cases will stay all further Proceedings against them,

C H A P. LII.

*How to enter the Recognizance on the Roll,
and when to be entered.*

BEFORE a Scire Facias is sued out, or Action commenced against the Bail, an Entry of the Recognizance must be made and the Roll docketted, and carried in, the Form of this Entry is as follows, *mutatis mutandis*.

Michaelmas Term, 17th of Geo. III. (the Term the Declaration is of).

Entry of the Defendant's Appearance.

Entry of the Recognizance.

Middlesex, ss. William Richardson complains of John Robinson, (and so on through the Declaration.) And the said John Robinson, by C. D. his Attorney, comes and defends the Force and Injury when, &c. And thereupon Charles Fairfield of the Strand, in the County of Middlesex, Gunsmith, and John Groves of Cheapside, in the City of London, Haberdasher, (the Bail as described in the Recognizance) came into the Court of our Lord the King before the King himself at Westminster, in their proper Persons, and became Pledges and Manucaptors, and each of them became Pledge and Manucaptor for the said Defendant, that if it should happen that the said Defendant should be condemned in the Plea aforesaid, then the said Manucaptors granted, and each of them did grant, that all such Damages,

Damages, Costs and Charges (if the Action be in Debt and Judgment be recovered on a Verdict say, "did grant that as well the said Debt as all such Damages, Costs, and Charges." If in Debt and Judgment by Default, say, "did grant that as well the said Debt as all Damages") as should be adjudged to the said Plaintiff in that Behalf, should be made of their and each of their Lands and Chattels, and to be levied to the Use of the said Plaintiff if it should happen, that the said Defendant should not pay the said Plaintiff or render himself on that Occasion to the Prison of the Marshal of the Marshalsea of our said Lord the King before the King himself.

The Entry of A. B. Gent. one, &c. of Michaelmas Term, 17th of George III. Docquet Paper.

Middlesex, ff. Recognizance of Bail for John Robinson, at the Suit of William Richardson. ———
Roll 152.

C H A P. LIII.

Scire Facias.

THE Scire Facias's most generally in Use are,
1. To revive a Judgment against the Defendant, his Executors or Administrators, and 2dly, against Bail on a forfeited Recognizance. Of the latter we have already spoken, of the first it will be sufficient to say, that if Execution has not been sued out against the Defendant within the Space of a Year and Day after Judgment signed, the Court presumes Prima Facie, that the Judgment is satisfied and extinct, yet however, it will grant a
B b 2 Writ

Writ of Sci. Fa. for him to shew Cause why the Judgment should not be revived, and Execution had thereon; also upon the Death of a Defendant after Judgment recovered, no Execution can issue against his Executors or Administrators, without first suing out a Writ of Scire Facias. To this Writ the Defendant or such Persons against whom the same Issues may appear and plead such Matter as he or they have to alledge, why Process of Execution should not be issued, and thereon proceed to Trial as in other Cases; but if no Appearance be entered within four Days after the Return of the Sci. Fa. (a Rule to appear having been given, and out) the Plaintiff becomes immediately intitled to Judgment and Execution, and need not deliver any Declaration in this Case.

If an Execution issue and is returned, and continued on the Roll, the Plaintiff may have Execution against the Defendant, without suing out a Sci. Fa. A Ca. Satis. may be void as to the Principal, and yet well enough to ground a Sci. Fa. against the Bail, as if a Ca. Sa. be sued out above a Year and Day after Judgment without reviving the Judgment by Sci. Fa. for the Bail are Strangers, and cannot take Advantage of that Error in a collateral Action.

Scire Facias to
revive a Judgment
against
Defendant in
Debt.

George the Third, &c. To the Sheriff of Middlesex, Greeting: Whereas William Richardson, lately in our Court, before us at Westminster, by Bill without our Writ, and by the Judgment of the same Court, recovered against John Robinson, 100l. of Debt, and also 20l. for his Damages, which he sustained by means of detaining that Debt as for his Costs and Charges by him about his Suit in that Behalf expended, whereof the said John was convicted, as appears to us of Record, and now on the Behalf of the said William, in our Court before us, we have been informed, that although
Judg-

Judgment be thereupon given, yet Execution for the said Debt and Damages still remains to be made, whereupon the said William hath humbly intreated us, that a proper Remedy may be provided for him in this Case, and we being willing that what is just should be done on this Occasion, command you, that by good and lawful Men of your Bailiwick you make known to the said John, that he be before us at Westminster, on Wednesday next after eight Days of St. Hilary, to shew if any Thing he has or knows to say for himself why the said William ought not to have his Execution against him for the said Debt and Damages, according to the Force, Form, and Effect of the said Recovery, if it shall seem expedient, &c. And further to do and receive what our said Court before us shall then and there consider of him in this Behalf, and have you there then the Names of those by whom you shall make known to him, and this Writ. Witness, &c.

Lee.

If your Judgment be in Case on promise, the Recital of it in the Sci. Fa. must be thus: "Recovered against John Robinson, 100l. for his Damages, which he sustained as well by Occasion of the not performing certain Promises and Undertakings lately made by the said John to the said William, as for his Costs and Charges by him about his Suit in that Behalf expended, &c." And the rest of the Sci. Fa. must be agreeable by omitting the Word *Debt* throughout, and inserting in the Stead, "Damages, Costs, and Charges."

If in Trespas say, "Recovered against the said John Richardson for his Damages, which he sustained as well by means of a certain Trespas lately done by the said John to the said William, as for his Costs and Charges, &c. throughout omitting the Word *Debt*," and inserting in the Stead, "Damages, Costs, and Charges."

George

The Praetising Attorney :

Against Executors.

George the Third, &c. To the Sheriffs of London, Greeting : Whereas William Richardson, lately in our Court, before us, (as before to) as it appears to us of Record ; and afterwards the said John, at the Parish of St. Mary Le Bow, in the Ward of Cheap, in your Bailiwick, made his last Will and Testament in Writing, and thereby appointed Thomas Turner, and James Thompson, Executors thereof, and afterwards died, the said William, being no Ways satisfied of his Debt and Damages (or of his " Damages, Costs, and Charges,") aforesaid. And now on the Behalf of the said William, in our said Court, before us, we have been informed, that although the said Judgment be given, yet Execution thereof still remains to be made to him, whereupon the said William hath humbly intreated us, that a proper Remedy may be provided for him in this Behalf, and we being willing that what is just should be done on this Occasion, command you, that by good and lawful Men of your Bailiwick, you make known to the said Thomas and James, that they be before us at Westminster, on Monday next after eight Days of St. Hilary, to shew if any Thing they have or know to say for themselves why the said William ought not to have Execution against them of the Debt and Damages (or " Damages, Costs, and Charges,") aforesaid, of the Goods and Chattels which were of the said John at the Time of his Death in their Hands, to be administred if it should seem expedient, &c. And further to do and receive what our said Court before us shall then and there consider of them in this Behalf, and have you there then the Names of those by whom you shall make known to them, and this Writ. " Witnefs, &c.

Lee.

Against Administrators.

George the Third, &c. To the Sheriffs of London, Greeting : Whereas (as before to) as it appears

pears to us of Record, and now on Behalf of the said William, in our said Court, before us, we have been informed, that although Judgment be thereupon given, yet Execution of that Judgment still remains to be made to him; and that the said John is dead, and died intestate, and that Administration of all and singular the Goods and Chattels, Rights, and Credits, which were of the said John, at the Time of his Death, was after the Death of the said John, at the Parish of St. Mary Le Bow, in your City, in due Form of Law, committed to one Sarah Richardson, Widow, Relict of the said John, as on the Information of the said William, in our said Court, before us, we have been given to understand, whereupon the said William hath humbly intreated us, &c. (as in the last Sci. Fa.)

Where Plaintiff or Defendant die after Interlocutory Judgment, and before final Judgment, the Action shall not abate, but may be revived by Sci. Fa. but not so as to impower the Executor, &c. of a deceased Plaintiff to carry on an Action which he as Executor, &c. could not have originally brought, or to load the Executor, &c. of a deceased Defendant with an Action which could not have been originally brought against such Executor, &c.

Scire Facias for an Administrator of a Plaintiff dying after Interloc. Judgment, and before Enquiry executed.

George the Third, &c. To the Sheriffs of London, Greeting: Whereas William Richardson, lately in our Court, before us at Westminster, by Bill without our Writ, impleaded John Robinson, being in the Custody of the Marshal of our Marshalsea, before us, for that whereas (recite the whole Declaration) to the Damage of the said William, of 50l. as he said, and thereupon he brought Interloc. Judgment. Suit, &c. And such were the Proceedings in our said

said Court, before us at Westminster, that afterwards, to wit, in Hil. Term last past, it was considered by our said Court, before us, that the said William ought to recover against the said John, his Damages occasioned by means of the Premises, but because it was not known to our said Court, before us, what Damages the said William had sustained, by Means of the Premises, it was commanded to the then Sheriffs of London, that by the Oaths of twelve good and lawful Men of their Bailiwick, they should diligently inquire what Damages the said William had sustained, as well by Means of the Premises, as for his Costs and Charges, by him about his Suit in that Behalf expended; and that they should send the Inquisition which they should take to us at Westminster, at a certain Day now past, under their Seals, and the Seals of those by whose Oath they should take that Inquisition, together with our Writ thereupon directed to them, as by the Record and Proceeding thereupon now remaining in our Court before us, appears; yet Inquisition of the said Damages still remains to be made: And the said William, after interlocutory Judgment had been given, in Form aforesaid, died intestate, to wit, at London aforesaid, after whose Death, to wit, on the Day of

• Death of a
Plaintiff.

in the Year of our Lord, 1777, at London aforesaid, Administration of all and singular the Goods and Chattels, Rights, and Credits, which were of the said William at the Time of his Death, was by Frederick, by divine Providence, Archbishop of Canterbury, Primate of all England, and Metropolitan, to whom the granting of Administrations of right belonged, in due Manner committed, to Sarah Richardson, Widow and Relict of the said William Richardson, as on the Information of the said Sarah, we have been given to understand; and because we are willing that those Things which have been rightly done and adjudged in our said Court
before

before us, should be duly executed, We command you, that by good and lawful Men of your Bailiwick, you make known to the said John, that he be before us at Westminster, on Wednesday next after eight Days of the Purification, to shew if any Thing he has, or knows, to say for himself, why the said Damages in the said Action ought not to be assessed and recovered by the said Sarah, according to the Form and Effect of the Statute in such Case made and provided, if it shall seem expedient, &c. And have there then the Names of those by whom you shall make known to him and this Writ. Witnesses, &c.

Scire Facias against an Administrator of a Defendant dying after interlocutory Judgment.

George the Third, &c. To the Sheriffs of London, greeting, Whereas William Richardson lately in our Court before us at Westminster, to wit, in Michaelmas Term last past, by Bill, without our Writ, impleaded John Robinson, then being in the Custody of the Marshal of our Marshalsea, before us, for that whereas (recite the whole Declaration) to the Dam. of the said William of 50 l. as he the said, and thereupon he brought Suit, &c. and such were the Proceedings in our said Court before us at Westminster, that the said William ought to recover his Damages, by occasion of the not performing the several Promises and Undertakings aforesaid, but because it was unknown to our said Court, before us, what Damages the said William had sustained, by occasion of the Premises aforesaid, We therefore commanded you, that by the Oaths of twelve good and lawful Men of your Bailiwick, you should diligently inquire what Damages the said William had sustained, as well by occasion of the not performing the several promises and Undertakings aforesaid, as for his Costs and Charges, by him about his Suit in that Behalf expended; and that you should

Inquiry awarded.

The Praetising Attorney :

Death of a Defendant.

send the Inquisition, which you should thereupon make to us at Westminster, on Thursday next, after eight Days of St. Hilary, under your Seal, and the Seals of those, by whose Oath you should take that Inquisition, together with that Writ; and the same Day was given to the said John, before us at Westminster aforesaid, as the Record and Proceedings thereupon remaining in our said Court, before us, at Westminster aforesaid, manifestly appears: And whereas before the said Thursday next, after eight Days of St. Hilary, the said John at London aforesaid, died intestate, and the Inquisition of the Damages aforesaid still remains to be made; and Sarah Robinson, Widow, and Relict of the said John, is Administratrix of all and singular the Goods and Chattels, which were of the said John, her late Husband, deceased, as on the Information of the said William, We have been given to understand; and because we would that those Things which in our said Court before us have been rightly done, should be duly executed, We command you, that by good and lawful Men of your Bailiwick, you make known to the said Sarah, that she be before us at Westminster on Wednesday next, after eight Days of the Purification, to shew, if any Thing she has, or knows, to say for herself why the said Damages in the said Action ought not to be assessed, and to be recovered by the William, according to the Form and Effect of the Statute in such Case made and provided, if it shall seem expedient, &c. And further to do and receive, &c.

Scire Facias
against Bail in
Debt. _____

George the Third, &c. To the Sheriff of Middlesex, greeting. Whereas William Richardson lately in our Court before us at Westminster, by Bill without our Writ, and by the Judgment of the same Court recovered against John Robinson One hundred Pounds of Debt, and also 10*l.* 10*s.* for his Damages which he sustained, as well by Occasion of the detaining that Debt, as for his Costs and Charges by

by him about his Suit in that Behalf expended, whereof the said John is convicted, as appears to us of Record; and although Judgment be thereupon given, yet Execution of the said Debt and Damages still remains to be made to him; and whereas Charles Fairfield of the Strand, in the County of Middlesex, Gunsmith, and John Groves of Cheapside, in the City of London, Haberdasher, heretofore, to wit, in the Term of St. Michael, in the 17th Year of our Reign in our said Court before us at Westminster, came personally and became Pledges and Bail, and each of them by himself became Pledge and Bail for the said John, that if it should happen the said John should be condemned in the Plea aforesaid, then they the said Bail granted and each of them for himself did grant, that as well the said Debt as all such Damages, Costs and Charges as should be adjudged to the said William in that Behalf, should be made of their and each of their Lands and Chattels, to be levied to the Use of the said William, if it should happen that the said John should not pay the said Debt and Damages, Costs and Charges, to the said William, or should not render himself on that Occasion to the Prison of the Marshal of our Marshalsea before us; nevertheless the said John has not as yet paid to the said William the said Debt and Damages, Costs and Charges, nor surrendered himself to the Prison of the Marshal of our Marshalsea before us, as we have been given to understand by the Information of the said William in our Court before us, whereupon the said William hath humbly intreated us, that he may have a proper Remedy in this Case; and we being willing that what is just should be done on this Occasion, command you, that by good and lawful Men of your Bailiwick, you make known to the said Charles and John Groves, that they be before us at Westminster on Thursday next after eight Days of St. Hilary, to shew if any Thing they have or know to say for themselves, why the said William ought not to have

The Practising Attorney :

his Execution against them, according to the Force, Form, and Effect of the said Recognizance, if it shall seem expedient, &c. And further to do and receive, &c. (as before.)

If the Action be in Case on Promise, or in Trespas, observe the Directions given, Page ()

Note. The Philazer makes out Scire Facias, when the Action is by Original.

In all Cases where the Sheriff returns a Nihil on the first Scire Facias, an alias must be sued out and returned before the Plaintiff will be intitled to the Execution, two Nihils being equal to a Scire Feci.

A Scire Facias to renew a Judgment ought to be directed into the County where the Original Action was brought, for it shall be intended that the Party against whom the Judgment was obtained, doth still inhabit in that County.

On a Recognizance taken in this Court, the Scire Facias must be brought in Middlesex, for the Recognizances here are not obligatory by the Caption, but by their being entered of Record in the Court.

If Bail be taken by a Commissioner in the Country, the Scire Facias may be sued out into Middlesex, or the County where taken.

On a Recognizance entered into by Bail on a Writ of Error, if it be entered to be taken at a Judge's Chambers in London, the Scire Facias must be sued out into London.

A Capias ad Satisfaciendum to charge Bail must have eight Days between the Teste and Return, and must lie four Days exclusive in the Sheriff's Office. The first Scire Facias should be tested on the Return of the Ca. Sa. and the Alias on the Return Day of the first Scire Facias. Fifteen Days are sufficient between the Teste of the first and Return of the last Scire Facias.

First Sci. Fa. tested, 24th Oct. ret. Lun. prox. post Mens. Mich. (31 Oct.) Al. Sci. Fa. tested, 31 Oct. retu. Lun. prox. post cras. Animar. (7 Nov.)

Obj.

Obj. That between the Teste of the first Writ, and Return of the last, there was not 15 Days *exclusive* of the Day of the Teste and Return.

Ans. There are eight Days inclusive between the Teste and Return of each Writ.

Sci. Fa. by Original must have 15 Days between the Teste and Return.

Every first Writ of Sci. Fa. whereon a Nihil is returned, ought to be declared to the Sheriff or left in his Office *sometime* before the Return thereof; and every Al. Sci. Fa. must be declared or left in the Office four Days *exclusive* before the Return thereof. So must every Sci. Fa. whereon a Scire Feci is returned, but no time is prescribed for warning the Defendant; if he be summoned on the Return Day it is sufficient.

If a Principal die after Ca. Sa. sued out and before the Return, the Bail is discharged, but must plead his Death; and if Principal die after it is returned, but before it is filed, the Court on Motion will stay the filing thereof in Favour of the Bill.

If a Judgment be of ten Years standing or above, the Plaintiff cannot sue out Sci. Fa. without moving the Court, and obtaining a Rule for that Purpose, and in order to obtain such Rule, there must be an Affidavit made of the Debt being unsatisfied, and the Judgment not vacated, and that Defendant is living; if above seven without a Motion at Side Bar. If after such Motion and Judgment revived by Sci. Fa. the Defendant dies before Execution, the Plaintiff must sue out a new Sci. Fa. against his Executors or Administrators, but may have it without Motion, for the Judgment was revived before.

The Al. Sci. Fa. differs from the first in nothing, except the Teste and Return, and adding after the Words, "We command you," these Words, "As we have before commanded you."

This Writ must be signed (for which pay 1 s. 8 d.) and sealed (pay 7 d.) If the Plaintiff wishes the Party

to

to be summoned, the Sheriff will make him out a Summons which he must give to an Officer with Instructions for the Execution; and at the Return the Sheriff will indorse his Return of Scire Feci on the Writ, but it is most usual to leave the Sci. Fa. in the Office to be returned nihil, and on the Return thereof make an Al. and leave that for the like Return, which Writs and Returns must be filed, if by Bill, at the Treasury Chamber, or with Mr. Heberden; if by Original, with the Philazer of the County, (Mr. Adams acts as Deputy for all the Counties) and then give a Rule with the Clerk of the Rules to appear ~~thus~~.

Richardson

v.

Fairfield and Groves,
Bail of Robinson.

} Rule on Scire Facias,
20th Jan. 1777.

A. B.

Pay 1s. 10d. This Rule expires in four Days, and if no Appearance be then entered, Judgment may be signed on the Scire Facias.

If the Defendant or Bail appear, the Plaintiff delivers his Declaration, and proceeds to Trial as in other Cases. The Form of the Declaration is as follows.

Hil. Term, 17th George III.

Lec.

Middlesex, ff. Our Lord the King gave in Charge to the Sheriff of Middlesex his Writ, close in these Words, to wit, George the Third, &c. (and so on through the Scire Facias, the Return of Nihil the Award of the Al. Sci. Fa. and the Return of Nihil thereon, as in the Entry Page Or if a Scire Feci be returned to the End of that Return as in the Entry Page) And the said John Richardson (or the Bail as the Case may be) at that Day having been

been solemnly demanded, came by C. D. his Attorney, upon which the said William Robinson prays Execution to be adjudged to him of the Debt and Damages (or "of the Damages, Costs, and Charges" as the Case may be) aforesaid (if against Bail add, "according to the Force, Form, and Effect of the said Recognizance) &c.

A. B. For the Plaintiff. }
For the Defendant. }

Issue on a Scire Facias against Executors on a Judgment against Testator.

Easter Term, 17th George III.

Lec.

London, ff. The Lord the King gave in Charge to the Sheriffs of London, his Writ, close in these Words, to wit, George the Third, by the Grace of God of Great-Britain, France and Ireland, King, Defender of the Faith, &c. To the Sheriffs of London, greeting. Whereas William Richardson lately in our Court before us at Westminster, by Bill, without our Writ, and by the Judgment of the same Court recovered against John Robinson 5 l. 10 s. for his Damages, which he sustained, as well by Occasion of the not performing certain Promises and Undertakings lately made by the said John to the said William, as for his Costs and Charges expended by him about his Suit in that Behalf whereof the said John is convicted, as appeareth to us of Record. And afterwards the said John [at London aforesaid, to wit, in the Parish of St. Mary-le-Bow, in the Ward of Cheap, made his last Will and Testament in Writing, and thereby constituted Thomas

Recital of Judgment against Testator.

Testator made his Will and Defendants Executors,

Turner

Dies and the
Executors
take upon them
by Defendants.

Scire Facias.

Ret. Nihil per
quoad Scire Fa-
ciam.

Turner and Edward Jones, Executors thereof, and afterwards died there, after whose Death the said Thomas and Edward took upon themselves the Burthen of the Execution of the said Testament; and now on the Behalf the said William in our Court before us, We have been informed that although Judgment be thereof given, yet Execution of the Damages, Costs, and Charges aforesaid still remaineth to be made to him, whereupon the said William prayeth that a proper Remedy may be provided for him in this Behalf; and we being willing that what is just should be done in this Behalf, command you, that by good and lawful Men of your Bailiwick, you make known to the said Thomas and Edward, that they be before us at Westminster, on Wednesday next, after eight Days of the Purification, to shew, if they have or know any Thing to say for themselves, why the said William ought not to have his Execution against the said Thomas and Edward, of the Damages aforesaid, of the Goods and Chattels, which were of the said John, at the Time of his Death, being in the Hands of them the said Thomas and Edward, to be administred according to the Force, Form, and Effect of the said Recovery, if it shall seem expedient to them, and further to do and receive all and singular those Things, which our said Court before us shall then and thereconsider of them in this Behalf, and have there then the Names of those by whom you shall make known to them, and this Writ. Witness William, Earl Mansfield, at Westminster, the fifth Day of February, in the 17th Year of our Reign. Lee. At which Day before our Lord the King at Westminster, came the said William, in his proper Person, and the Sheriffs of London, to wit, Nathaniel Newnham, Esq; and George Hayley, Esq; at that Day returned, that the said Thomas and Edward have nothing, nor hath either of them any Thing in their Bailiwick, whereby they can make known to them,

or

or to either of them, nor are they found, nor is either of them found in the same, and the said Thomas and Edward came not. Therefore as before it is commanded to the Sheriffs of London, that by Good, &c. they make known to the said Thomas and Edward, that they be before the said Lord the King on Wednesday next, after fifteen Days from the Day of Easter to shew in Form aforesaid, if &c. And further, &c. the same Day is given to the said William, at the same Place, &c. At which Day before our Lord the King at Westminster, came the said William in his proper Person, and the said Sheriffs of London as before, return, that the said Thomas and Edward have nothing, nor hath either of them any thing in their Bailiwick, whereby they can make known to them, or to either of them, nor are they found, nor is either of them found in the same. And the said Thomas and Edward, at the same Day, being solemnly called, come, by C. D. their Attorney and say, that the said William ought not to have Execution against the said Thomas and Edward, of the Damages, Costs and Charges aforesaid, of the Goods and Chattels, which were of the said John, at the Time of his Death, being in the Hands of the said Thomas and Edward, as is above supposed by the said Writ to be administered, because they say, that after the giving the said Judgment, and before the issuing out of the said first Writ of the Scire Facias, and in the Life Time of the said John, to wit, on the 29th Day of January, in the 17th Year of the Reign of the said Lord the present King, the said William, for obtaining his said Damages, Costs and Charges, prosecuted out of the Court here of and upon the said Judgment, a certain Writ of the said Lord the King of Cap. ad Sat. against the said John, directed to the Sheriffs of London, by which said Writ, it was commanded to the said Sheriffs, that they should take the said John, if he

Al. Sci. Fd.
awarded.

Ret. Nihil.

Plea a Ca. Sa.
against Testator,
who being taken
in Execution
paid the Da-
mages recovered.

D d

should

should be found in their Bailiwick, and safely keep him, so that they might have his Body before the said Lord the King, at Westminster, on Wednesday next, after the Morrow of the Purification, to satisfy the said William of the Damages aforesaid, whereof he was convicted; and that they should have then there the said Writ, which said Writ of of Cap. ad Sat. the said William afterwards, and in the Life-time of the said John, to wit, on the first Day of January, in the 17th Year aforesaid, at London aforesaid, to wit, in the Parish of Saint Mary-le-Bow, in the Ward of Cheap, delivered to the said Sheriffs, to be executed in due Form of Law, by virtue of which said Writ of Cap. ad Sat. the said Sheriffs afterwards, and before the Return thereof, and in the Life-time of the said John, to wit, on the second Day of February aforesaid, at London aforesaid, in the Parish and Ward aforesaid, took and arrested the said John, and then and there had and detained the said John in their Custody, in Execution for the Damages, Costs, and Charges aforesaid, until the said John afterwards in his Life-time, to wit, on the Third Day of February, in the 17th Year aforesaid, at London aforesaid, in the Parish and Ward aforesaid, paid and satisfied the said Damages, Costs and Charges to the said William, and this the said Thomas and Edward are ready to verify, wherefore they pray Judgment, if the said William ought to have Execution against the said Thomas and Edward, of the Damages, Costs and Charges aforesaid, of the Goods and Chattels which were of the said John, at the Time of his Death, being in the Hands of the said Thomas and Edward, (as above is supposed by the said Writ) to be administered, &c. And the said William saith, that he, by reason of any Thing before alledged, ought not to be precluded from having his Execution of the Damages, Costs and Charges aforesaid, in Form aforesaid, because

Repl. that the
Testator was not
taken in Execu-
tion.

cause in protesting that the said William did not prosecute any such Writ of Capias ad Sat, as the said Thomas and Edward above in pleading have alledged; and also in protesting that the said John, in his Life-time did not pay or satisfy the Damages aforesaid, or any Part thereof to the said William. For Plea, the said William saith, that the said John, in his Life-time was not taken in Execution for the Damages, Costs and Charges aforesaid, in Manner and Form as the said Thomas and Edward above in pleading have alledged; and he prayeth that this may be inquired of by the Country, and the said Thomas and Edward do so likewise. Therefore let

Venire awarded,

Entry of Judgment by Default after the second Scire Facias and Nihil returned against Executors or Administrators.

Go on as in the above to the End of the Return of the second Nihil, ending thus; — neither were they or either of them found in the same. And the said Thomas and Edward, although at that Day solemnly required, come not, nor did either of them come, but made Default. It is therefore considered, that the said William have his Execution against the said Thomas and Edward, of the Goods and Chattels, which were of the said John, at the Time of his Death, in their Hands, to be administered, if they have so much in their Hands, by the Default of the said Thomas and Edward, &c.

Entry of Judgment against Defendant on a Scire Facias post Annum & Diem.

It is therefore considered, that the said William have his Execution against the said John, of the

D d 2

Debt

The Practising Attorney:

Debt and Damages (or Damages, Costs and Charges, as the Case may be) afore said, according to the Form, and Effect of the said Recovery, by the Default of the said John, &c.

Entry of Judgment on a Scire Facias against Bail.

It is therefore considered, that the said William have his Execution against the said George and Henry, of the Debt and Damages afore said, (or Damages, Costs and Charges, as the Case is) according to the Force, Form, and Effect of the said Recognizance.

Writ of Inquiry of Damages after a Scire Facias against an Administrator where the Defendant died before the Return of the first Writ of Inquiry.

George, &c. To the Sheriff of Middlesex, greeting. Whereas William Richardson, lately in our Court before us at Westminster, that is to say, in Michaelmas Term last past, by Bill, without our Writ impleaded, John Robinson, then being in the Custody of the Marshal of our Marshalsea, before us, for this Cause, to wit, That whereas (the Declaration) to the Damage of the said William of 50 £ as he saith; and such Proceedings were had thereupon in our Court before us, at Westminster, that the said William ought to recover his Damages, occasioned by the not performing the said several Promises and Undertakings (suit this to the Action) but because it was unknown to our Court, before us, what Damages the said William hath sustained, by reason of the Premises, We commanded your Predecessor, that by the Oath of twelve good and lawful Men of your County, he should diligently inquire what Damages the said William had sustained, as well by reason of the not performing the said several Promises and Undertakings, as for his Costs and Charges, by him about his Suit in that Behalf expended

pended; and that the Inquisition which he should take thereupon, he should send to us at Westminster on Thursday next, after eight Days of St. Hilary, under his Seal and the Seals of them, by whose Oath he should take such Inquisition, together with that Writ; and the same Day was given to the said William to be before us at Westminster aforesaid, as by the Record and Proceedings thereof in our same Court before us, at Westminster, manifestly appears. And whereas on Behalf of the said William, it hath been shewn to us, that before the said Thursday next, after eight Days of Saint Hilary, the said John died intestate, and an Inquisition of the said Damages then remained to be taken; and that one Sarah Robinson, Widow, and Relict of the said John, was Administratrix of all and singular the Goods and Chattels, Rights and Credits, which were of and belonging to the said John, her said late Husband, who died intestate, as we have been informed by the said William, and because we were willing that those Things which were right and just, should be done in our Court before us, We therefore commanded you, that by honest and lawful Men of your Bailiwick, you should cause it to be known to the said Sarah, that she was before us at Westminster, on Saturday next, after fifteen Days of Saint Hilary, to shew Cause if she knew of, or had any Thing to say for herself, why Damages ought not to be assessed for, and recovered by the said William, according to the Form and Effect of the Statute in such Case made and provided, if it should seem expedient, &c. and further to do and receive those Things, that our said Court there before us should consider of her in that Behalf; and that you should have there at the same Time the Names of those, by whom you should so cause it to be known to her and that same Writ, at which Day the said William by his Attorney, came before us at Westminster, and you our Sheriff of Middlesex made

made a Return to us, that by honest and lawful Men of your Bailiwick, you had caused to be made known to the said Sarah, that she was to appear before us, at the Day and Place contained in the said Writ, to have shewn Cause if she had or knew of any Thing to say for herself, why the said Damages ought not to have been against her, and recovered by the said William, if it should seem expedient, &c. according to the Tenor of the said Writ, which said Sarah being so warned and solemnly required to be here, likewise came, by C. D. her Attorney, whereupon the said William prayed that the said Damages might be assessed and recovered by him in the said Action; and because the said Sarah then said nothing, nor shewed or alledged any Cause to hinder final Judgment to be given in the said Action, or why Damages ought not to have been assessed in the said Action. Therefore at the Request of the said William, We command you, that by the Oath of twelve honest and lawful Men of your Bailiwick, you diligently inquire what Damages the said William hath sustained, as well occasioned by the Premises, as for his Costs and Charges laid out by him about his Suit in that Behalf; and the Inquisition that you shall take thereon, do you send to us at Westminster, on Thursday next, after the Morrow of the Purification, under your Seal and the Seals of them, by whose Oath you shall take such Inquisition, together with this Writ. Witness, &c.

Lee.

Entry of final Judgment against an Executor of a Defendant dying before writ of Inquiry.

Interloc. Judgment.

Wherefore it is considered, that the said William ought to recover against the said John, his Damages which he has sustained, by Occasion of the Premises, but because it is unknown to the Court of our Lord the King, before the King himself, now here, what

what Damages the said William has sustained, by Occasion of the Premises. It is therefore commanded to the Sheriffs of London, that by the Oath of twelve good and lawful Men of their Bailiwick, they diligently inquire what Damages the said William hath sustained, as well by Occasion of the Premises, as for his Costs and Charges, by him about his Suit in that Behalf expended; and that the Inquisition which they should thereupon take, they should make appear to our Lord the King at Westminster, on Thursday next, after eight Days of Saint Hilary, under their Seals and the Seals of those, by whose Oath they should take that Inquisition, together with the said Writ to them thereupon directed; the same Day is given to the said William there, &c. at which Day before our Lord the King at Westminster came the said William by his Attorney aforesaid, and the Sheriffs did not return the said Writ, nor did they do any Thing thereupon, and the said John did not come; and upon this the said William says that the Inquisition of the said Damages still remains to be made. And that the said John after the said interlocutory Judgment was given in Form aforesaid, and before any final Judgment obtained in the said Action, and before this Day at London aforesaid, in the Parish and Ward aforesaid, made his last Will and Testament in Writing, and by his said Will constituted and appointed one Elizabeth Robinson his Widow and Relict, Executrix of his said Will, and the said John afterwards died there, after whose Death and before this Day the said Elizabeth proved the said Testament, in due Form of Law, and took upon her the Burthen and Execution thereof, to wit, at London aforesaid, in the Parish and Ward aforesaid, and because this is not denied, but the Allegation of the said William to the Court of our said Lord the King now here, appears to be true, therefore the said William prays the Writ of our Lord the King of Scire Facias, against the said Elizabeth,

Vic. non misit Breve.

Defendant made his Will.

And died.

Executrix proves the Will.

Scire Facias
awarded.

Executrix ap-
pears.

Scire Feci.

Nil dicit.

Inquiry award-
ed.

Elizabeth, Executrix of the said Testament, according to the Form of the Statute in such Case made and provided, to be directed to the Sheriffs of London aforesaid, and it is granted to him, &c. whereby it is commanded to the Sheriffs of London, that by good and lawful Men of their Bailiwick, they make known to the said Elizabeth, that she be before our Lord the King at Westminster, on Wednesday next, after eight Days of the Purification, to shew if any Thing she has or knows to say for herself why the said Damages in the said Action ought not to be assessed and recovered by the said William, if it shall seem expedient, &c. At which Day before our Lord the King at Westminster came, as well she said William, by his Attorney aforesaid, as the aforesaid Elizabeth, in her proper Person; and the Sheriffs of London, to wit, Nathaniel Newnham, Esq; and George Hayley, Esq; return, that by Virtue of the said Writ to them directed, by Edward Rogers and George Kemp, good and lawful Men of their Bailiwick, they had made known to the said Elizabeth, that she should be before our Lord the King, at the Day and Place in the said Writ contained, to shew as the said Writ demands and requires; and the said Elizabeth says nothing, nor shews nor alledges any Matter to arrest final Judgment in the said Action, or why the said Damages in the said Action ought not to be assessed and recovered by the said William, therefore at the Prayer of the said William, by the Court of our Lord the King now here, it is commanded to the Sheriffs of London, that according to the Form of the Statute in such Case lately made and provided, by the Oath of twelve good and lawful Men of their Bailiwick, they diligently enquire what Damages the said William has sustained, as well by Occasion of the Premises, as for his Costs and Charges by him about his Suit in this Behalf expended, and that they send the Inquisition, which, &c. to our Lord the King at Westminster, on Wednesday

nesday next, after fifteen Days from the Day of Easter, under their Seals, and the Seals of, &c. together with the Writ of our said Lord the King to them thereupon directed; the same Day is given to the said William there, &c. At which Day before our said Lord the King at Westminster, came the said William by his Attorney aforesaid, and the Sheriffs of London, to wit, Nathaniel Newnham, Esq; and George Hayley, Esq; by virtue of the said Writ to them thereupon directed, return a certain Inquisition taken before them at the Guildhall of the City of London, situate in the Parish of St. Lawrence, in the Old Jewry, in the Ward of Cheap, in the said City, on the 4th Day of April, in the 17th Year of the Reign of our Sovereign Lord George the Third, now King of Great-Britain, &c. by the Oath of Twelve, &c. by which it is found that the said William had sustained Damage, by Occasion of the Premises, besides his Costs and Charges by him about his Suit in this Behalf expended to 10 l. and for those Costs and Charges to 20 s. It is therefore considered that the said William recover against the said Elizabeth his Damages aforesaid, by the said Inquisition found in Form aforesaid, as also 9 l. 4 s. 2 d. which by the C. of our said Lord the King now here, were adjudged of Increase to the said William by his Assent for his said Costs and Charges, which said Damages in the whole amount to the 20 l. 4 s. 2 d. to be levied of the Goods and Chattels of the said John, at the Time of his Death, in the Hands of the said Elizabeth, to be administered, if she has so much in her Hands, &c.

Return.

Final Judgment
de bonis Testa-
toris.

In the preceding Scire Facias, if Parcel of the Debt, &c. is satisfied on a Scire Facias, say as before to

— As it appears to us of Record, and now on Behalf of the said William in our Court before us, we are informed that he has been satisfied for 5 l. Parcel of the said Debt and Damages (or as the

Ee

Action

Action is) and that although Judgment for the said Debt and Damages be given, yet Execution for 10*l.* Residue of the said Debt and Damages still remains to be made to him, whereupon the said William hath prayed us, that, &c. (as before to) why the said William ought not to have his Execution against the said John for the said 10*l.* Residue of the said Debt and Damages, according to the Force, Form and Effect, of, &c. (as before.)

If two Scire Facias's Issue returnable in different Terms, the first must be entered *of the Term wherein it is returnable*, and an Award of the second is sufficient without setting it forth at length.

If you do not proceed upon the Scire Facias with a Year and Day, after it is taken out, you cannot after that proceed upon that Writ, but must sue out a new Scire Facias for the old Writ is discontinued.

How to obtain Judgment de bonis propriis against an Executor or Administrator.

If you get Judgment *by Default* in an Action against an Executor or Administrator, (which is *de Bonis* of the Party deceased only) the old Way on nulla bona returned, on a Scire Facias was to issue out a Writ to the Sheriff to inquire whether the Defendant had wasted any of the Effects of the Deceased, and upon a Devastavit returned by Inquisition to proceed by Scire Facias for the Defendant to shew Cause why the Plaintiff should not have Judgment *de bonis propriis*, to which the Defendant might appear, and plead *plene administravit*, but now the Scire Facias Inquiry, and Scire Facias are for the Sake of Expedition made out in one Writ.

But this is not a good Way to proceed where the Debt is but small, the Plaintiff being allowed no Costs after the first Judgment, unless the Defendant appears,

appears, and pleads to the Scire Facias, the best Way therefore is to bring an Action of Debt on the Judgment suggesting a Devastavit.

If an *Original* be sued out in one County, and Bail put in and the Venue laid in another, though it is good against the Defendant, yet the Bail are discharged and not liable to be proceeded against, otherwise by Bill and on a Testatum.

Formerly if the Plaintiff declared for more than the Process the Bail were discharged. But by a Rule of Court, made E. 5. G. 2. no Person being Bail in Court, or before a Judge, shall upon a Recovery against the Defendant be answerable for any greater Sum or Sums than are sworn to or indorsed on the Writ or Process on which the Defendant was arrested (although Part of the Condition of the Recognizance is, "To pay the whole Condemnation Money if the Defendant does not." And if a greater Sum be recovered, he shall not be discharged, but shall be liable for such Sum or Sums as shall be sworn due or indorsed, or any lesser Sum that shall be recovered against the Defendant in such Action wherein he became Bail, together with Costs of Suit.

Note, The Bail in the Original Action upon a Writ of Error brought, are not liable to the Costs upon the Affirmance of the Judgment, though they are liable for the Debt and Costs or Damages recovered in the Original Action; but the Bail in Error are answerable for the whole.

In the Venire Distringas and Jurata for a Trial upon a Scire Facias, after the Words, "In a Plea of Debt, Trespas, &c." (as the Action may be) add these Words, "Whereupon a Scire Facias, &c."

C H A P. LIV.

Of bringing an Action against the Bail on the Recognizance.

WE have observed that there are two Ways of proceeding against Bail on a forfeited Recognizance, viz. by Scire Facias and by Action of Debt. The Latter is in many Cases a more eligible Method for the Plaintiff to pursue than the Former, having his Costs taxed, and allowed on a Judgment recovered in this Case, which he has not if his Proceedings are by Scire Facias, and the Bail suffer Judgment for not appearing. The only Difference in the Commencement of this Action from that of all other Actions by Bill is, that the following Ac eriam must be inserted in the Body of the Latitat or other Process issued on this Occasion, notwithstanding the Defendants are not arrested thereon, but only served with Copies, viz. "In a
 " Plea of Trespass, and also to a Bill of the said
 " Plaintiff against the said Defendant in a Plea of
 " Debt upon Recognizance, according to the Custom of our Court, before us to be exhibited." Or if a Bill of Middlesex, "according to the Custom
 " of the Court of the Lord the King, before the
 " King himself to be exhibited." For it otherwise might be a Surprise on the Bail, who not knowing the Cause of Action, may let slip the Time allowed them to surrender the Defendant, and thereby discharge themselves. The rest of the Proceedings are perfectly the same as in other Cases.

By Rule Trin. I. Ann. Bail sued in an Action of Debt on their Recognizance, shall have eight entire Days in full Term next after the Return of the Writ of Latitat, or other Process sued out against them to render the Principal; and upon
 Notice

Notice thereof given to the Plaintiff, or his Attorney, all further Proceedings against the Bail on the Recognizance shall cease.

CHAP. LV.

Of rendering Defendant in Discharge of Bail, and on Habeas Corpus, &c.

BY Rule Trin. III. Ann. It is ordered, that where any Person shall render himself in Court, or before one of the Justices of the Court in Discharge of his Bail, or shall be brought in Court upon any Writ of Habeas Corpus, or before one of the Justices of the Court in order to be committed to the Custody of the Marshal of the Court; such *Reddedit se* or Writ of *Habeas Corpus*, together with the Return thereof, shall be left with the Secondary or the Judge's Clerk; before whom such Person shall be rendered or brought to be filed. And a Copy or Note of such Rendering or Return of the Writ of Habeas Corpus under the Hand of such Judge, or the Secondary, shall be delivered to the Marshal of this Court, at the Time of the Commitment of such Person to his Custody. And such Copy or Note shall be made and prepared by the Person so rendering himself or prosecuting such Writ of Habeas Corpus, or by his Attorney on his Behalf.

But the Attorney has only to produce the Defendant and Habeas Corpus or Bail (on which ever the Surrender may be) in Court, or before a Judge at his Chambers. And the Judge's Clerk will take the Surrender, make out the Committitur and

The Practising Attorney:

and deliver the Defendant into the Custody of the Tip-staff to be conveyed to the King's-Bench, Prison.

If the Defendant be surrendered before a Judge after the Return of a Ca. Sa. and is thereupon committed to the Tip-staff, from whom he escapes or is rescued, it will not be a good Surrender because it is an Indulgence to the Bail to surrender after a Ca. Sa. returned. Otherwise, if before Ca. Sa. returned, for to surrender before, or at the Return of the Capias is Matter of Right. And now by Rule of Court, upon the first sort of Surrender, the Principal ought to be two Days in the Marshal's Custody to make it a good Surrender.

Where any Defendant in any Action here in Court depending, shall be rendered into the Custody of the Marshal of this Court, in Discharge of his Manucaptors, the Defendant's Attorney shall, *without delay*, give Notice of such Surrender to the Plaintiff's Attorney, and shall make Affidavit thereof, before the Bail in that Action shall be filed or discharged. And in Default thereof, such Surrender shall be void. Rule Trin. I. Ann.

In the King's Bench

Between { William Richardson, Plaintiff,
and
John Robinson, Defendant.

Notice of Surrender.

Take Notice, that John Robinson, the above-named Defendant, this Day surrendered himself (or was surrendered) in Discharge of his Bail before the Honourable Mr. Justice Ashurst, at his Chambers in Serjeant's-Inn, Chancery-Lane, London, (or in open Court) and was thereupon committed to the Custody

Custody of the Marshal of the Marshalsea of this Honourable Court; dated, &c.

To Mr. B. }
Plaintiff's Attor. }

Your's, &c.
C. D.
Defend. Attorney.

For the Form of an Affidavit of Service of this Notice, Vide ()

After this, you are to make an Entry of the Render in the Marshal's Book, kept in the King's Bench Office, thus:

Middlesex, ss. John Robinson surrendered himself in Discharge of his Bail to the Custody of the Marshal of the Marshalsea, the 28th Day of January, 1777, at the Suit of William Richardson. And was thereupon committed by the Right Honourable William, Earl of Mansfield, there to remain until, &c.

C. D.

Attorney for the Bail.

29th January, 1777.

Then get a Certificate from the Marshal that the Defendant is in Custody, and the Bail-piece from the Judge's Chambers (if it be there) on producing which, with the Affidavit of the Service of the before Notice, the Master will indorse an Exoneratur on the Bail-piece; for, till that is discharged, the Bail continue liable, and then file it with Mr. Heberden, to whom pay 4d.

CHAP.

C H A P. LVI.

Of Charging Defendant in Execution.

IN order to charge the Defendant in Execution, you get a Rule from the Clerk of the Rules for the Marshal to certify that the Defendant is in his Custody. Serve him with a Copy thereof, and he will write his Acknowledgment at the Bottom of the Rule, pay 10s. 6d. then enter a Committitur in the Marshal's Book, in the King's Bench Office, thus :

Middlesex, ss. John Robinson is committed in Execution to the Custody of the Marshal of the Marshalsea, at the Suit of William Richardson for £50. Damages (or Debt, as the Case may be) in a Plea of Trespass on the Case, there to remain until, &c.

A. B. Attorney.

Judgment of Trin. Term, 16th Geo. III.

Roll 1291.

And file the Rule with Mr. Heberden in the same Office, to whom pay 2s.

If the Defendant be in any other Custody than the King's Bench, a Habeas Corpus ad Satisfaciendum must be brought to Charge him in Execution (vide Habeas Corpus.)

C H A P. LVII.

Non Pro ss.

IF the Plaintiff neglect to deliver a Declaration in two Terms inclusive after the return of the Writ issued, the Defendant may (having first put in special

cial or common Bail, as the Writ may require) sign Judgment of *Non Profs* against the Plaintiff for want of such Declaration. Or, if he is guilty of other Delays against the Rules of the Court in replying, entering the Issue, pleading in Bar, &c. he is also liable to this Judgment, which being signed, he becomes liable to pay the Defendant the Costs he has been put to, *pro falso clamore suo*.

The *Non Profs* is a Default or Neglect of the Plaintiff in not following his Suit, and therefore he may bring a fresh Action on the same Ground of Complaint; but the Court will not suffer the Defendant to be held to Bail a second Time for the same Cause of Action, and will on Application stay the Proceedings till the Costs of the *Non Profs* are paid.

A *Non Profs* is in the Nature of final Judgment, and is signed in the same Manner by making an Incipitur on a double Half-Crown Stamp and Roll, which the Clerk of the Judgments will mark, after which you may immediately tax Costs and sue out Execution, or bring an Action against the Plaintiff on the Judgment.

If the Proceedings are by Original, before a *Non Profs* can be signed, the Defendant must enter a Rule for the Plaintiff to declare and demand a Declaration in Writing, after the Expiration whereof if the Plaintiff don't declare, a *Non Profs* may be signed in Manner before directed.

Plaintiff ought to pay the Costs of one *Non Profs* only where a Latitat issued against four Defendants though they appear severally by different Attornies, where the *Non Profs* was, for not declaring against them in two Terms for P. Holt, C. Jus. though the Plaintiff may declare against them severally, yet the Writ was awarded against them jointly and the Plaintiff was non-suited before any Declaration; therefore,

The Praffising Attorney:

therefore, there ought to be but one Non-suit for all of them.

The Defendant is not bound to accept a Declaration though tendered after the End of the second Term, but may sign his Non Profs notwithstanding such Tender.

Trinity Term, 17th Geo. III.

Lee.

Entry of Non-
Profs for want
of declaring
upon an Arrest.

Defendant's
Appearance.

Judgment signed
etc.
Mercy.

Norfolk, ff. John Rolinson, who was arrested by Virtue of a Writ of our Lord the now King, of Latitat, issuing out of the Court of our said Lord the King, before the King himself at Westminster, directed to the Sheriff of Norfolk, returnable in the same Court on Wednesday next after eight Days of the Purification in Hilary Term last past, to Answer William Richardson in a Plea of Trespafs, and also to a Bill of the said William against the said John for 20*l.* upon Promises, according to the Custom of the said Court of our Lord the King, before the King himself to be exhibited. And the said John by C. D. his Attorney, according to the Form of the Statute in such Case made and provided. And because the said William hath not hitherto declared against the said John in the same Court of our said Lord the King, before the King himself, by Bill or Declaration in any personal Action or Ejectment of Farm before the End of Hilary Term then next following, being the next Term after the Appearance of the said John, or at any other Time. Therefore, it is considered, that the said William take nothing by his said Writ, but that he be thereupon in Mercy. And it is further considered, that the said John recover against the said William 33*s.* for his Costs and Charges by him about his Defence in this Behalf sustained, adjudged to the said John by the Court of our said Lord the King now here by his Assent, according to the Form of the Statute in such Case, lately

lately made and provided; and that the said John have Execution thereof, &c.

Worcestershire, ff. W. W. who according to the Form of the Statute, was served with a Writ of our Lord the King, called a *Latitat*, issuing out of the Court of our said Lord the King, before the King himself at Westminster, at the Suit of R. M. returnable in the same Court, on the Morrow of All Souls, in Michaelmas Term last past, to Answer to the said R. of a Plea of Trespass. And the said W. at the same Day appeared by A. B. his Attorney, according to the Form of the Statute in such Case made and provided. And because the said R. hath not hitherto declared against the said W. in the same Court of our said Lord the King, before the King himself, by Bill or Declaration in any personal Action or Ejectment of Form before the End of the Term of St. Hilary then next following after the Appearance of the said W. or at any Time since. Therefore, &c. (as before).

In the Entry of a Non Profs for want of a Replication, not entering the Issue on other Proceeding subsequent to the Declaration, you begin your Roll with an Entry of Warrants of Attorney for Plaintiff and Defendant, then follows the Memorandum and Declaration, as in an Issue, next the Plea and Judgment for want of Replication, as under,

Michaelmas Term, 17th Geo. III.

Lee.

Worcestershire to wit, R. M. puts in his Place, &c.

Worcestershire to wit, W. D. puts in his Place, &c.

F f 2

Wor.

Ch^e Practising Attorney :

Worcestershire to wit. Be it remembered, &c.
(the common Memorandum before the Issue and
Declaration to the End).

Non Profs for
want of a Re-
plication.

And thereupon the said W. prays that the said R. may Answer to his said Plea by him, in Form afore-
said above pleaded. Whereupon a Day is given by the
Court of our Lord the King, now here until Mon-
day next after fifteen Days of St. Hilary, to wit, to
the said R. to reply thereunto, &c. The same Day
is given to the said William at the same Place. At
which Day, before our Lord the King at Westmin-
ster, comes the said William by his Attorney afore-
said. And the said R. although solemnly required,
comes not, nor doth he say any Thing in reply to
the said Plea of the said W. by him in Form afore-
said above pleaded or further prosecute his said Bill
against him in this Behalf. Therefore, it is con-
sidered, that the said R. take nothing by his said
Bill, but that he and his Pledges for prosecuting, to
wit, John Doe and Richard Roe be in Mercy, &c.
And that the said W. go thereof without Day,
&c. And it is further considered, that the said W.
recover against the said R. 7l. for his Costs and
Charges by him about his Defence in this Behalf
sustained, adjudged by the Court of our said Lord
the King, now here, to the said W. at his Request;
and that the said W. have Execution thereof.

C H A P. LVIII.

Trial by Proviso.

IF the Plaintiff shall not proceed to Trial within
the Time he ought, by the Course of the Court,
the Defendant having given a Rule for the Plaintiff
to enter his Issue (if not before entered) and the
Issue

Issue being entered, he may bring the Cause to Trial by Proviso, the Proceeding in which Case by the Defendant are the same as if the Plaintiff had carried the Record down for Trial only, that in the Distringas after the Word "Default" next before the Teste of the Writ are added the following Words: "Provided always that if two Writs shall thereupon come to you, you shall execute only one of them."

No Trial by Proviso can be had in London or in Middlesex till Default made by the Plaintiff after the Issue joined, nor in Country Causes, till the Plaintiff hath made Default in trying his Cause the next Assizes after Issue joined; and in neither Case till a Rule for Trial by Proviso is entered.

Notice of Trial must be given by the Defendant to the Plaintiff in all Cases by Proviso, and if the Defendant does not proceed to Trial, according to such Notice, or countermand in Time, the Plaintiff shall have his Costs to be taxed.

Both Plaintiff and Defendant may carry down the Record at the same Time, but the Trial shall be on the Plaintiff's Record if he enters it with the Marshal; but if he refuses or omits to do so, the Defendant may proceed on his Record.

C H A P. LIX.

Of Judgment, as in Case of a Non-suit.

TRIALS by Proviso are now almost totally disused; a more eligible Remedy being given to the Defendant in case the Plaintiff delays proceeding to Trial in due Time, by Statute 14. Geo. II. C. 17. which Enacts, That where any Issue shall
be

The Practising Attorney :

be joined in any Action or Suit at Law, and the Plaintiff or Plaintiffs in any such Action or Suit have or hath neglected or shall neglect to bring such Issue on to Trial, according to the Course and Practice of the Court; the Judges at any Time after such Neglect, upon Motion made in open Court (due Notice having been given thereof) may give the like Judgment for the Defendant or Defendants, as in Cases of Non-suit, unless the Judges shall, upon just Cause and reasonable Terms, allow any further Time or Times for the Trial of such Issue. And if the Plaintiff or Plaintiffs shall neglect to try such Issue within the Time or Times so allowed, then, and in every such Case, the Judges shall proceed to give such Judgment as aforesaid.

All Judgments given by virtue of this Act, shall be of like Force and Effect as Judgments upon Non-suit, and of no other Force or Effect, same Stat.

Provided also, that the Defendant or Defendants shall upon such Judgment be awarded, his, her, or their Costs in any Action or Suit, where he, she, or they would upon Non-suit be intitled to the same, and in no other Action or Suit whatsoever, same Statute.

In order to apply for Judgment upon this Statute, as in case of Non-suit, you must give Notice of Motion, and have an Affidavit of the State of the Proceedings, and of the Plaintiff's Default in proceeding to Trial; and also of the Service of the Notice of Motion. Upon reading of which Affidavit, and of the Entry of the Issue on Record (which you must have brought into Court for that Purpose) the Court will make a Rule for the Plaintiff to shew Cause why the like Judgment should not be given for the Defendant, as in case of Non-suit. This the Defendant must draw up and serve a Copy thereof on the Plaintiff's Attorney.

ney. And on the Day following, the Day in the Rule for the Plaintiff to shew Cause (for no Rule Nisi can be made absolute till the Day-following) he must instruct his Council to make the same absolute, (having an Affidavit of the Service of the Rule Nisi) when if the Plaintiff do not shew sufficient Cause to the contrary, or undertake to try his Action within such Time as the Court shall think reasonable to allow (which Undertaking is made a Part of the Rule) it will of Course be made absolute; and the Defendant having drawn up his Rule may sign the Non-suit, tax Costs, and sue out his Execution as in other Cases.

King's Bench.

Between } William Richardson, Plaintiff,
and
{ John Robinson, Defendant.

TAKE Notice, that this Honourable Court will be moved on Monday next, or so soon after as Council can be heard, that the like Judgment be awarded for the Defendant herein, as in case of a Non-suit for Default of the Plaintiff in not proceeding to Trial in due Time after Issue joined. Dated the 25th Day of January, 1777.

Notice of Motion for Judgment, as in case of a Non-suit.

Your's, &c.

C. D.

Defendant's Attorney.

To Mr. A. B.
Plaintiff's Attorney.

In

The Practising Attorney :

In the King's Bench.

Between } Wm. Richardson, Plaintiff,
and
John Robinson, Defendant.

Affidavit where-
on to move for
Judgment, as in
Case of a Non-
suit.

C. D. of, &c. Attorney for the above-named Defendant, maketh Oath that Issue was joined in this Cause in Trinity Term last, and that the Plaintiff did not proceed to Trial at the then next Assizes for the County of Kent, (in which said County the Venue in this Cause is laid) which, according to Practice of this Court, he might have done. And saith that he, this Deponent, did on Tuesday, the fourth Day of November Instant, serve a true Copy of the Notice hereunto annexed, (annex a Copy of the Notice of Motion) upon Mr. A. B. who acts as Attorney for the Plaintiff in this Cause, by delivering the same to a Clerk of the said Mr. A. B. at his, the said Mr. A. B's. Chambers in Hare Court, in the Temple, London.

Sworn, &c.

C. D.

Entry of Judg-
ment, as in case
of a Non-suit.

At which Day, before our Lord the King, at Westminster, cometh the said John, by his Attorney aforesaid, and the said William, although called, cometh not; and it appearing to the Court of our said Lord the King, now here, that the said William hath neglected to bring the Issue, above-joined, to be tried according to the Course and Practice of the said Court of our said Lord the King, now here. Therefore, according to the Form of the Statute, in that Case, lately made and provided, it is considered by the said Court, that the said William take nothing by his aforesaid Bill; but that he and his Pledges for prosecuting, to wit, John Doe, and Richard Roe, be in Mercy, &c. And that the said

said John go thereof without Day. And it is further considered, that the said John recover against the said William, seven Pounds for his Costs and Charges by him about his Defence, in this Behalf sustained, adjudged by the Court of our said Lord the King, now here, to the said John, at his Request, according to the Form of the Statute in the like Case made and provided; and that the said John have Execution thereof, &c.

C H A P. LX.

Special Jury.

BY Statute 3. Geo. 2. c. 25. either Party is intitled, upon Motion, to have a special Jury, struck for the Trial of any Issue, as well at the Assizes, as at Bar, he paying the extraordinary Expences incurred thereby, unless the Judge will certify (which is done on the Back of the Record after Trial) that the Cause required a special Jury: in which case, the Master in taxing Costs, will allow the Expences thereof.

A Rule for a special Jury is obtained, and the Jury appointed in the following Manner: You give Instructions to Council to move for a special Jury, whereupon a Rule is made of course, which draw up, and get an Appointment thereon from the Master, of a Day to Name the special Jury.—Serve a Copy of the Rule and Appointment on the Attorney concerned for the opposite Party, and on the under Sheriff of the County wherein the Action is brought, or his Agent, that he may attend with the Freeholders Book. On the Day appointed, for the above Purpose, both Parties being present,

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the

the Master will nominate forty-eight Persons, qualified to serve on special Jurors. Bespeak a Copy of the forty-eight of the Master's Clerk; and advise with your Client which to reject; then get another Appointment, and serve a Copy in like Manner on the adverse Party's Attorney, to strike the special Jury. And at the Time appointed, each Party, in the Master's Presence, will strike out twelve, and the remaining twenty-four are returned to the Sheriff to try the Issue joined.

If either Party fail to attend, the Master, on Behalf of him absent, will strike out twelve of the forty-eight nominated.

The Attorney applying for the special Jury pays the Master and under Sheriff, each one Guinea on striking the special Jury.

A List of the Jury returned being got from the Master, you annex it to the Distringas, as leave with the Sheriff in Time for him to summon them for the Trial.

CHAP. LXI.

Of Granting a View.

WHERE it shall appear to the Court, that it will be necessary that the Jurors should have a View of the Messuages, Lands, or Place in Question, in order to their better understanding the Evidence; the Court, on Motion, may order a special Writ of Distringas to Issue, whereby the Sheriff is commanded to have six of the first twelve of the Jurors named in such Writ, or some greater

Number

Number of them at the Place in Question, some convenient Time before the Trial, who then and there shall have the Matters in Question shewn to them by two Persons, named in the Writ for that Purpose, and appointed by the Court. And the Sheriff shall, by Special Return, certify that a View hath been had according to the Command of the Writ. Statute 4 and 5. Anna, c. 16. § 8.

Where a View shall be allowed in any Case, six of the Jurors named in the Pannel, or more (who shall be mutually consented to by the Parties on both Sides; or, if they cannot agree, shall be named by the proper Officer of the Court (the Secondary) or if need be, by a Judge, where the Cause is depending; or by a Judge, before whom the Cause shall be brought on to Trial) shall have the View, and shall be the first Sworn, or such of them as appear on the Jury to try the Cause before any drawing (by Ballot) and so many only shall be drawn to be added to the Viewers who appear, as shall make up the Number of Twelve.—Stat. 3. G. 2. c. 25. § 14. made perpetual by Stat. 6. G. 2. c. 37.

As the having a View was not by either of these Statutes made a Matter of Course, though such a Practice had prevailed and had been abused to the Purposes of Delay, the Court thought it their Duty to take care, that their ordering a View should not obstruct Justice, and prevent the Cause being tried; and therefore resolved not to order one any more without a full Examination into the Propriety and Necessity of it, unless the Party praying it should come into such Terms as might prevent an unfair Use being made of it; for all the Judges of this Court were clearly of Opinion, that the Act of Parliament meant that a View should not be granted unless the Court was satisfied that it was proper and necessary, and they thought it better that a

Cause should be tried upon a View, had by any six, by a fewer Number, or even without any View, than be delayed for a great Length of Time. Bur. Rep. 252.

Distringas Jurators for a View.

George the Third, &c. To the Sheriffs of Surry greeting. We Command you, that you Distrain the several Persons named in the Pannel annexed to this Writ, the Jury summoned in our Court before us, between William Richardson, Plaintiff, and John Robinson, Defendant, by all their Lands and Chatties, in your Bailiwick, so that neither they, nor any one by them intermeddle therewith until you shall have another Precept thereon from us; and that you answer to us of the Issues of the same, so that you may have their Bodies before us, at Westminster, on Wednesday next, after fifteen Days, from the Day of Easter, or before our Justices assigned to take the Assizes in your Court, if they shall first come on Tuesday the 24th Day of March at Maidstone in your County, according to the Form of the Statute, in such Case made and provided, to make a certain Jury of the Country, between the Parties aforesaid, of a Plea of Trespas, and to hear their Judgments thereupon of many Defaults. And in the mean Time, according to the Form of the Statute, in such Case lately made and provided. We Command you, that you have six of the first Twelve of the said Jurors, or any greater Number of them, at the Place in Question, upon the second Day of March next ensuing, who then shall have View of the said Place, in the Presence of A. B. on Behalf of the Plaintiff, and C. D. on Behalf of the Defendant, appointed by our Court, before us, to shew the said Place to the said Jurors. And, that in what Manner you shall execute this our Precept, you make Return to us at Westminster, and to our Justices at the said Assizes, remitting to us this our Writ. Witness, &c.

Lec.
And

And in the mean Time, according to the ^{Another.} Form of the Statute, in such Case lately made and provided. We further Command you, that you cause six of the first Twelve of the said Jurors, impennelled to try the Issue joined between the said Parties, or as many more of them as you shall think fit to take a View of the Place in Question, on the 20th Day of March next ensuing; and that the said Jurors meet on the same Day, at the House of James Jones (as in the Rule for the View) in your County, and proceed from thence to view the said Place, in the Presence of A. B. on the Part of the Plaintiff, and C. D. on the Part of the Defendant, appointed by our Court, before us, to shew the said Place, to such of the said Jurors as shall come to View the same; and that you make appear to us at Westminster, on the said Wednesday next after fifteen Days, from the Day of Easter, in what Manner you shall have executed this our Precept, and that you have there then this Writ. Witness,

Lee.

C H A P. LXII.

Habeas Corpus.

THE Writ of Habeas Corpus, is the most celebrated Writ in the English Law, and of this there are various Kinds made Use of by the Courts at Westminster, suited to the Case of the Person, at whose Instance it is issued. Such is the Habeas Corpus, ad respondendum. When a Man hath a Cause of Action against one who is confined by the Precess of some inferior Court, in order

order to remove the Prisoner and charge him with this new Action in the Court above. Such is that *ad Satisfaciendum*, when a Prisoner hath had Judgment against him in an Action, and the Plaintiff is desirous to bring him up to some superior Court to charge him with Proceis of Execution. Such also are those *ad Prosequendum*, *Testificandum*, *Deliberandum*, &c. which Issue, when it is necessary to remove a Prisoner, in order to Prosecute or bear Testimony in any Court, or to be tried in the proper Jurisdiction where the Fact was committed. Such is lastly the common Writ of *ad Faciendum et Recipiendum*, which issues out of any of the Courts of Westminster Hall, when a Person is sued in some inferior Jurisdiction, and is desirous to remove the Action into the superior Court, commanding the inferior Judges to produce the Body of the Defendant, together with the Day and Cause of his Caption and Detainer, (whence the Writ is frequently denominated an *Habeas Corpus cum Causa*) to *do and receive* whatsoever the King's Court shall consider in that Behalf. This is a Writ grantable of common Right, without any Motion in Court, and it instantly supercedes all Proceedings in the Court below.

To avoid vexatious Delays by removal of frivolous Suits, it is enacted by Stat. 21. Jac. I. c. 23. that where the Judge of an inferior Court of Record is a Barrister of three Years standing, no Cause shall be removed from thence by Habeas Corpus or other Writ, after Issue or Demurrer deliberately joined, that no Cause if once remanded to the inferior Court by Writ of *Procedendo*, or otherwise, shall ever afterwards be again removed, and that no Cause shall be removed at all if the Debt or Damages laid in the Declaration do not exceed the Sum of 5*l*. But an Expedient having been found out to elude the latter Branch of the Statute, by procuring a nominal Plaintiff to bring an Action for

for 5 *l.* or upwards, (and then by the Course of the Court the Habeas Corpus removed both Actions together) it is therefore enacted by Stat. 12. G. 1. c. 29. that the inferior Court may proceed in such Actions as are under the Value of 5 *l.* notwithstanding other Actions may be brought against the same Defendant to a greater Amount.

But the great and efficacious Writ in all Manner of illegal Confinement, is that of Hab. Cor. ad Subjiciendum, directed to the Person detaining another, and commanding him to produce the Body of the Prisoner, with the Day and Cause of his Caption and Detention, ad faciendum subjiciendum et recipiendum, to do, submit to, and receive whatsoever the Judge or Court awarding such Writ shall consider in that Behalf. This is a high Prerogative Writ, and therefore by the Common Law issuing out of the Court of King's Bench, not only in Term Time, but also during the Vacation, by a Fiat from the Chief Justice, or any other of the Judges, and running into all Parts of the King's Dominions, for the King is at all Times entitled to have an Account why the Liberty of any of his Subjects is restrained, wherever that Restraint may be inflicted. If it issues in Vacation, it is usually returnable before the Judge himself who awarded it, and he proceeds by himself thereon, unless the Term shall intervene, and then it may be returned in Court. Indeed if the Party were privileged in the Courts of Common Pleas, and excluded as being an Officer or Suiter of the Court, an Habeas Corpus ad Subjiciendum might also have been awarded from thence, and if the Cause of Imprisonment were palpably illegal, they might have discharged him; but if he were committed for any criminal Matter, they could only have remanded him, or taken Bail for his Appearance in the Court of King's Bench, which oc-

casioned

caſioned the Common Pleas to diſcountenance ſuch Applications.

In this Court it was, and ſtill is neceſſary to apply for it by Motion to the Court, as in the Caſe of all other Prerogative Writs (Certiorari, Prohibition, Mandamus, &c.) which do not iſſue of mere Courſe, without ſhewing ſome probable Cauſe why the extraordinary Power of the Crown is called into the Party's Aſſiſtance. For as was argued by Lord Chief Juſtice Vaughan, "It is granted on Motion, " becauſe it cannot be had of Courſe, and there " is therefore no *Necceſſity* to grant it, for the Court " ought to be ſatisfied that the Party hath a " probable Cauſe to be delivered." And this ſeems the more reaſonable, becauſe (when once granted) the Perſon to whom it is directed can return no ſatisfactory Excuse for not bringing up the Body of the Priſoner; ſo that if it iſſued of mere Courſe without ſhewing to the Court or Judge ſome reaſonable Ground for awarding it, a Traitor, or Felon under Sentence of Death, a Soldier or Mariner in the King's Service, a Wiſe, a Child, a Relation, or a Domeſtic confined for Inſanity, or other prudential Reaſons, might obtain a temporary Enlargement by ſuing out an Habeas Corpus, though ſure to be remanded as ſoon as brought up to the Court. And therefore Sir Edward Coke, when Chief Juſtice, did not ſcruple in 13 Jac. I. to deny a Habeas Corpus to one confined by the Court of Admiralty, for Piracy, there appearing upon his own ſhewing, ſufficient Grounds to confine him. On the other Hand if a probable Ground be ſhewn, that the Party is impriſoned without juſt Cauſe, and therefore hath a Right to be delivered, the Writ of Habeas Corpus is then a Writ of Right, which " May not be denied, but ought to be " granted to every Man that is committed or detained in Priſon, or otherwiſe reſtrained, though

" it

" it be by the Command of the King, the Privy
" Council, or any other." Blackstone's Comment.
Vol. 3. c. 8.

A Writ of Habeas Corpus to remove the Body of a Prisoner, directed to the Sheriffs of London or Middlesex, the Judge of the Marshalsea Court, or other inferior Court within five Miles of London, may be granted either in Vacation or Term Time, returnable immediately; but if the Habeas Corpus be directed to any other Sheriff or Court further distant, it must be returnable at a certain Day in Court, unless it be to deliver over a Prisoner in Discharge of his Bail.

If upon a Certiorari, or Habeas Corpus cum Causa, it be returned that the Prisoner is condemned by Judgment, he shall be remanded, and remain in Prison without being let to Bail against the Will of the Plaintiffs, until Satisfaction be made them of the Sums adjudged. Stat. 2 H. V. Stat. 1. c. 2.

No Habeas Corpus or other Writ sued out of any of the Courts at Westminster, to remove any Cause depending in any Court, shall be allowed, except the said Writ be delivered to the Judge or Officer before the Jury have appeared, and one of them is sworn. Stat. 43 Eliz. c. 5. §. 2. 3 Car. I. c. 4. and 16 Car. I. c. 4.

No Habeas Corpus, Certiorari, or other Writ or Process (other than Writs of Error and Attaint) to be sued out of his Majesty's Courts at Westminster, &c. to stay or remove any Cause depending in any Court of Record which shall have Jurisdiction to hold Plea in that Cause, shall be received or allowed, except the said Writs be delivered to the Steward, Judge, or Officer, before Issue or Demurrer joined, so as the said Issue or Demurrer be not joined within

The Practising Attorney:

fix Weeks next after the Arrest or Appearance.
Stat. 21 Jac. I. c. 23. §. 2.

If any Writs shall be sued forth contrary to the Intent of this Act, the Judge or Officer to whom such Writs shall be directed, may disallow the same and proceed as if no such Writs had been granted. Same Stat. c. 8. §.

Provided that this Act shall extend only to such Courts of Record, and for so long Time only as there shall be an utter Barrister of three Years standing that shall be Steward, Town Clerk, Judge, or Recorder of the same Court, or that shall be Assistant to such Judge, and there present, and not of Council in any Cause then depending in the same Court. Same Stat. §. 6.

This Act shall not extend to any Cause wherein any such Plea shall be pleaded as could not be tried within the Jurisdiction of such inferior Court. — §. 7.

The Sheriff upon a Habeas Corpus is not bound to bring up the Prisoner, unless reasonable Charges be tendered him. Cox and Dowl. Hil. 20. and 21 Car. II.

Said that a Habeas Corpus at the King's Suit lies to the Cinque Ports, but not at the Suit of a Subject. Pamphlet's Case. Mich. 21. Car. 2. Sed Vide Alder and Pusie's Case in Scacc. Trin. 22. Car. II. and Pell's Case. Hil. 25, and 26. Car. 2, 3. Keb. 279. Item. 350.

Habeas Corpus to remove a Cause out of an inferior Court, and the Plaintiff making Search finds Bail, but the Habeas Corpus not being returned and filed, the Bail signified nothing, and therefore he carried the Cause back by Procedendo, and of this the Defendant

Defendant complained to the Court, but ruled that the Defendant cannot put in Bail till the Habeas Corpus be returned. Masters and Burges, Mich. 20. Car. II.

A Habeas Corpus ought to be on Motion where the Party is committed for a Crime. 1 Lev. 1.

By the Habeas Corpus the Proceedings in the Court below are at an End, and the Proceedings in the superior Court are de novo, and Bail must be put in de novo. Skinner, 244.

All Writs of Habeas Corpus directed to any Sheriff or Officer of an inferior Court, at above the Distance of five Miles from London, must be made returnable at a Day certain, in Court; if returnable in Hil. or Trin. Term, they must not be made returnable after the second Return of those Terms, in order if Bail be required thereon, Plaintiff may be enabled to declare of same Term, and Defendant shall be obliged to plead to Issue as of these Terms, so that Plaintiff may try his Cause the next Assizes if he thinks fit, or in Default of pleading Judgment, may be entered against Defendant of same Term, if Rules to plead are given in due Time. R. Mich. 1654.

If Habeas Corpus sued out in Hil. or Trin. Term, or the Beginning of the Vacation of those Terms, Writ must be made returnable the first or second Return of the subsequent Terms, viz. Easter or Mich. or Plaintiff, or Summons before a Judge, may have a Procedendo. Same Rule.

The Habeas Corpus ad Respondendum, or ad Satisfaciendum granted to the Warden of the Fleet, Sheriff of a Corporation, or Keeper of any inferior Prison, returnable at a Day certain in Court, are as

The Practising Attorney :

good Cause of Detainer to such Officer, as a Capias ad Respondendum directed to the Sheriff.

The Attorney applying for Hab. Cor. ad Satis, must on Defendant's being brought into Court to be charged with his Client's Debt; take Care to have the Term and Number Roll indorsed upon such Writ of Habeas Corpus.

If Defendant is arrested, and in Custody of the Sheriff, to avoid going to the County Goal, he may remove himself by Habeas to the King's Bench; but if not in Custody, by Process out of this Court, and would choose to be removed to the King's Bench, he must get some Creditor to sue out a bailable Writ against him, which being lodged in the Sheriff's Office, this Action as well as all others, will be returned on the Habeas, and give the Court or Judge before whom the Defendant is brought, Authority to turn him over to the Custody of the Marshal. So if Defendant is in Custody in this Court, and would go to the Fleet, a Capias must be sued out in the Common Pleas, and in like Manner lodged with the Sheriff, to ground the Habeas to turn him over to the Fleet.

If Defendant is a Prisoner in an inferior Court, Habeas will not discharge him out of such Custody, till Bail to Habeas is put in above, and justified; therefore it is most prudent to put in Bail below, in order to give Defendant his Liberty, and then bring Habeas.

Habeas Corpus
to remove a Prisoner from the Fleet to the King's Bench.

George the Third, &c. To the Warden of our Prison of the Fleet, greeting. We command you, that you have the Body of John Robinson, (the Prisoner to be removed) be detained in our Prison under your Custody, as it is said, by whatsoever Name he is called in the same, together with the
Day

Day and Cause of the taking and detaining the said John Robinson, before the Right Honourable William, Earl of Mansfield, our Chief Justice, assigned to hold Pleas in our Court before us, at his Chambers in Serjeant's-Inn, Chancery Lane, immediately after the receiving of this our Writ, to do and receive what our said Chief Justice shall then and there consider of him in this Behalf, and have you then there this Writ. Witness, &c.

Lec.

Ad Respondendum.

—— To answer to William Jenkinson, in a Plea of Trespass, and also to a Bill, &c. so that we may be able to proceed, &c. (as before).

This Writ is brought to charge a Defendant in Custody of an inferior with an Action in the superior Courts.

Ad Satisfaciendum.

—— To satisfy William Jenkinson, of 20*l.* for his Damages, (make it agreeable to the Judgment) which he has sustained, as well by occasion of a certain Trespass lately committed by the said John Robinson, against the said William Jenkinson, as for his Costs and Charges, &c. (as in the Ca. Sa.) as appears to us of Record, so that, &c. (as before).

This Writ is brought to charge Defendant in Execution, when in Custody of the Warden of the Fleet, or of an inferior Court.

Habeas

The Practising Attorney:

*Habeas to the Sheriff of the County where Defendant
is in Custody for want of Bail.*

George the Third, &c. To the Sheriff of Hampshire, (the proper County) greeting. We command you, that you have the Body of John Robinson, (taken by you, and in your Prison detained under your Custody, as by your Return lately sent into our Court, before us you have charged yourself) before us at Westminster, (on some Return Day in Term, on which you would have the Defendant brought up) to answer William Richardson, in a Plea of Trespas; and also to a Bill of the said William, (here insert ac eciam, as in the Writ taken out by you against Defendant) and have then there, &c.

If the Sheriff or other Officer returns any of these Writs *Languidus in Prisons*, (sick in Prison) make out the following Habeas.

George the Third, &c. To the Sheriff of —, (direct it to the Person in whose Custody the Defendant is) greeting. We command you, that you have the Body of John Robinson, taken by you, and in your Prison under your Custody, (although sick) detained as by your Return sent into our Court before us, manifestly appears to us, (or if the *Languidus in Prisons* was returned by a former Sheriff) say, as manifestly appears to us by the Return of John Skinner, Esq; late Sheriff of the County aforesaid, you have before us at Westminster (the Return of the Habeas) to answer William Richardson, (as before) and have, &c.

Care must be taken in suing out Habeas Corpus that it be directed with the proper Stile and Title
of

of the Court, or Person to whom it is to be delivered for Execution.

The Habeas Corpus returnable immediately, is usually made returnable before the Chief Justice of the Court, (although it issue in Term Time) but Bail may be taken before any Judge of the same Court.

The Habeas Corpus is ingrossed on a 5 s. stamped Piece of Parchment, make a Note for the Office, and carry the Writ to the Signer of the Writs, who will sign the same; pay him in Term, 6s. 8d. and 7s. 8d. in Vacation, and for sealing, 7d.

If the Habeas Corpus is brought for the Purpose of turning a Defendant over to the King's-Bench Prison from some other Custody; the Bailiff will bring the Defendant, and the Habeas Corpus returned to the Judge's Chambers, or in Court, when you apply in the latter Case to the Master, and in the Former to the Judge's Clerk, who will get the Judge's Committitur, and deliver the Defendant to the Tip-staff. The Habeas and Return is filed with the Judge, or Master, before whom the Defendant is brought.

An *Habeas Corpus ad Testificandum* may be brought to remove a Person in Execution to be Witness. 3. Bur. 1440.

The Habeas ad Sat. et Recip. may be made returnable immediately, notwithstanding Rule. Mich. 1654. and 4. and 5. W. and M. 3. Bur. 1876.

Habeas may be brought to remove a Person out of private Custody; and the Court will use their Discretion as to Directions thereon. 3. Bur. 1436.

Upon

The Practising Attorney:

Upon the Commitment of Defendant on a *Habeas Corpus ad Satisfaciendum*, the Attorney prosecuting this Writ, must take Care to have the Roll in Court at the Time the Defendant is brought up, and the following Committitur Piece, drawn out on a Slip of Parchment, which (signed by the Judge) must be delivered to the Marshal on the Commitment of the Prisoner Rule. Trin. 3. Ann.

Middlesex. ff. John Robinson (the Defendant, as described in the Pleadings) is committed in Execution to the Custody of the Marshal, of the Marshalsea, of our Lord the King, before the King himself, at the Suit of William Richardson, for 154l. Debt, and 13l. Costs, there to remain until, &c.

A. B. Judgment of Michaelmas Term, 17 George III. Roll, 154l.

Every Person committed to the Custody of the Marshal by virtue of a *Habeas Corpus*, shall remain in actual Custody the Space of two Days next after such Commitment, notwithstanding any other *Habeas Corpus* from any other Court whatsoever. Hil. 5. W. & M. Vide Proceedings against Prisoners.

C H A P. LXIII.

Of giving Rules for Bail on Habeas Corpus and putting in and perfecting Bail thereon.

IN all Cases wherein special Bail is required in the Court below, the like must be put in on Removal of the Cause by *Habeas Corpus*, without regard

regard to the amount of the Debt; and the Bail so put in are liable to all Actions, for the Suit of the Plaintiff or Plaintiffs mentioned in the Return of the Habeas wherein he or they shall declare against the Defendant at any Time within two Terms next after the bringing such Habeas.

The Defendant is not obliged to put in Bail of course on the removal of a Cause by Habeas Corpus, but it lies on the Plaintiff to compel him so to do, for as the Plaintiff may not proceed the Cause being removed from the Jurisdiction of the Court wherein it was first instituted; and as the Defendant cannot sign a Non Profs, or otherwise intitule himself to Costs against the Plaintiff unless he (the Plaintiff) proceed to Declaration against him, it is unreasonable the Defendant should be put to the Expence and Trouble of putting in Bail, when it is probable the Plaintiff will not follow his Suit against him. Therefore, when the Plaintiff's Attorney discovers the Cause to be removed, to compel the Defendant to put in Bail thereon, he must take out a Rule from one of the Judges of the Court for a Procedendo, unless the Defendant put in good Bail within four Days in Term, or six in the Vacation, and serve a Copy thereof on the Attorney, bringing the Habeas within which Times, unless Bail be accordingly put in, and Notice thereof given, a Procedendo may be brought, and if Bail is put in, you then take out a second Rule for better Bail (which whether taken out in Term or Vacation, expires in four Days). Serve a Copy in like Manner on the Defendant's Attorney, who must, if served in Term, justify his Bail by the return of such Rule: But if served in the Vacation, he need only give Notice within that Time for a Justification on the first Day of the ensuing Term. Pay for these Rules in Term one Shilling, in Vacation two Shillings.

The Common Bail only is necessary, you fill up the blank a common bail piece to the Habeas and Return.

The Practising Attorney:

The Plaintiff must serve his Rule for better Bail within twenty-eight Days after Notice of Bail above, or he cannot afterwards make them justify.

The Defendant being served with a Rule for Bail, and having got the Habeas and Return, must ingross his Bail-piece and annex them all together; then take them to the Judge's Clerk with the Bail and he will take their Acknowledgment, to whom pay in Term 6s 6d. in Vacation 7s. 6d. and then give Notice thereof to the Plaintiff's Attorney.

Bail-piece on a Habeas Corpus.

Hilary Term, 18th Geo. III.

Palace Court (the Court from whence Cause removed.	}	John Richardson is delivered to Bail on a Habeas Corpus, to
--	---	---

C. D,

Charles Fairfield, of the Strand, in the County of Middlesex, Gunsmith,
and
John Groves, of Cheapside, London, Haberdasher.

At the Suit of the Plaintiff (or Plaintiffs) in the Plaint..

If Common Bail only is necessary, you fill up and annex a common Bail-piece to the Habeas and Return,

Return, which file at the Judge's Chambers on the return of the Rule, and give Notice as above.

There is no difference in the Justification of Bail on a Habeas Corpus from that of other Cases, nor in the Declaration or other subsequent Proceedings.

C H A P. LXIV.

Procedendo.

IF the Defendant neglect to put in Bail above, or justify in due Time, the Plaintiff may sue out a Writ of Procedendo, directed to the Judges or Officers of the Court below, commanding them to proceed in all Suits against the Defendant, notwithstanding the Habeas issued for removal thereof; and after the suing out of this Writ, the Cause can never again be removed by any Process whatsoever.

George the Third, &c. To the Judges of our Court of our Palace of Westminster, and to every of them greeting. Although we lately by our Writ commanded you that you should have the Body of John Richardson detained in our Prison, under your Custody, as it was said, under safe and secure Conduct, together with the Day and Cause of his being taken and detained by whatsoever Name the said John might be called in the same before our Right Trusty and well beloved William, Earl of Mansfield, our Chief Justice, assigned to hold Pleas in our Court before us, at his Chambers, situate in Serjeant's-Inn, Chancery-Lane, immediately after the Receipt of that Writ, to do and receive all and

Preceden'o.

The Practising Attorney's

singular those Things, which our said Chief Justice should then and there consider of him in that Behalf. Yet we being now moved with certain Causes in our Court before us, command you and every of you, that in all Pleas or Suits against the said John, at the Suit of William Robinson, in our Court, before you, or any of you levied or affirmed, ~~at before you or any of you now depending unde-~~ terminated, you proceed with what Speed you can in such Manner, according to the Law and Custom of England, as you shall see proper. Our said Writ to you thereupon, first directed to the contrary in any Thing, notwithstanding. Witness, William, Earl of Mansfield, ~~Sec.~~

Lee.

This Writ must be ingrossed on a two Shilling stamped Piece of Parchment, pay signing and sealing 7d. Carry the same to the Secondary of the Court to which it is directed, who files it; and on this Authority they resume their Jurisdiction of the Suit, and proceed thereon to Judgment.

CHAP. LXV.

Certiorari.

THIS Writ is in the nature of an Habeas Corpus cum causa, and is seldom used but when necessary to bring up the Record from an inferior Court to correct some Proceeding therein. It must be carried to the Secondary of the Court whereto it is

is directed, who thereupon returns the Record and Proceedings into the King's Bench.

George, &c. To Dolme Vanheythuysen, Esq. Certiorari to remove a Cause from White-Chapel Court,
 Steward of his Majesty's Court of Record, holden within the Manors of Stepney and Hackney, in the County of Middlesex, the Hamlets and Liberties of the same, and also to the Prothonotary of the same Court greeting. Being willing for certain Reasons to be certified on a certain Plaint in our Court before you, against John Richardson, at the Suit of William Robinson, in a Plea of Trespass on the Case (as the Action is), we command you that the Plaint aforesaid, as fully and entirely with all Things touching the same, as it remains before you, by whatever Names the said John and William may be called in the same without delay you certify to us at Westminster, together with this Writ, that we may further cause to be done therein as of right we shall see fit to be done. Witness, William, Earl of Mansfield, &c.

This Writ must be ingrossed on a five Shilling Stamp. It is not signed, sealing 7d. The Directions given under the Head of Habeas Corpus will serve in the further Prosecution of this Writ.

C H A P. LXVI.

Proceedings against Prisoners.

FORMERLY when any Defendant was detained in Custody by mesne Process of this Court for want of Bail, if the Plaintiff did not within two Terms after the Arrest cause the Defendant to be brought up by Habeas Corpus and committed, so that

that he might declare against him in Custody of the Marshal, the Defendant might be discharged out of Custody upon common Bail or Appearance but now.

By Stat. 4 and 5 W. and M. the Plaintiff may declare against Defendant in whatever Custody he be before the End of the next Term after the return of the Writ whereon he is arrested.

Note, No Rule can be had for further Time to declare against a Prisoner.

And that in all such Declarations it shall be alleged in what Custody the Defendant is, which Allegation shall be as effectual as if he were in the Custody of the Marshal of the Marshalsea.

Upon which Statute the following Rules were made, Easter 5 W. and M.

1. That no Copy of a Declaration be delivered to any Prisoner in Custody, before the Day of the Return of the Process upon which the Defendant was taken or charged in Custody.

2. That no Rule be given for the Defendant in Custody to appear and plead to any Declaration against him, until an Affidavit be filed with the Clerk of the Rules of the delivering a Copy of such Declaration, and of the Time when, and the Person to whom the same was delivered, and that the Defendant was arrested and charged in Custody by Process out of this Court, returnable before the delivery of such Copy, and that the Time of filing the Affidavit be entered upon the Affidavit by the Clerk of the Rules, and that a Copy of such Affidavit be produced to the Secondary before the signing the Judgment.

3. If

3. If a Copy of the Declaration be delivered against such Defendant before *Mensem Pascha*, in Easter or *Craftinum Animarum*, in Michaelmas Term, and Affidavit made thereof and filed, and the Defendant doth not appear before the End of ten Days after Easter and Mich. Term respectively, Judgment may be entered against him, if Rules have been given; but if he doth appear before the End of ten Days after the Term, he shall Imparle until the next Term, unless the Action be in London or Middlesex, and the Defendant be in Prison within forty Miles of London or Westminster, then though he doth appear before the Expiration of ten Days after the End of the Term, he shall plead two Days before the Effoign Day of the next Term, and in Default thereof, (Rules for pleading having been given) Judgment may be entered against him as aforesaid.

4. If a Copy of the Declaration be delivered against such Defendant on or after *Mensem Pascha*, in Easter or *Craftinum Animarum*, in Mich. Term, or in Hil. or Trin. Term, and thereupon the Plaintiff gives Rules to appear and answer, then if the Defendant appear two Days before the Effoign Day of the next Term, he shall Imparle until the said next Term; but if he doth not appear within that Time, Judgment shall be given against him.

5. If a Writ be returnable in any Term, and a Copy of the Declaration has been delivered before the Effoign Day of the next Term, the Plaintiff in such next Term may give Rules to appear and answer, and if the Defendant does not appear and plead upon the Expiration of the Rules, Judgment shall be given against him.

6. If the Declaration be not filed before the End of the next Term after the Writ or Process by which the Prisoner was taken or charged in Custody,

The Practising Attorney :

is returnable, and Affidavit made and filed in Manner as aforesaid before the End of twenty Days next after such Term, the Prisoner shall be discharged by common Bail, signed by one of the Judges of this Court.

7. If any Gaoler or Keeper of a Prison having received a Copy of a Declaration against any Prisoner in his Custody, shall suppress the same, and not deliver it forthwith unto such Prisoner, an Attachment shall be issued against him.

If the Defendant be in Custody of a Sheriff, (for the Proceedings are different when in Custody of the Marshal of the King's Bench) you make three Copies of the Declaration, (which must have a proper Beginning as hereafter directed) one on treble Penny Parchment, called a Bill, to file with the Clerk of the Declarations, another on treble Penny Paper to deliver to the Gaoler of the Prison wherein the Defendant is confined, and the third to annex to an Affidavit of such Delivery, (Vide Page 107) to be filed with the Clerk of the Rules, of which Declaration and Affidavit he will make you an Office Copy, on proper Stamps, or for the sake of Expedition, it is frequently done by the Attorney himself, who must take it to the Clerk of the Rules to be marked when he files the original Declaration and Affidavit, and pay for the same according to the Length; so that in Fact there are four Copies made of the Declaration. The Clerk of the Rules will enter a Rule for the Defendant to appear and plead on the Office Copy of the Declaration, after which (if he fail so to do in due Time) a Demand of a Plea being made, Judgment may be signed against him; and if he does appear and plead, the subsequent Proceedings are the same as in other Cases.

Declaration

John Robinson Defendant
Henry

Declaration against a Prisoner on a Bill of Middlesex.

London, ff. William Richardson complains of John Robinson being in the Custody of the Sheriff of the County of Middlesex, by virtue of a Precept of our Lord the King, called a Bill of Middlesex; issued out of the Court of our said Lord the King, before the King himself, at the Suit of the said William against the said John, and returnable in the same Court on, &c. For that whereas, (go on with the Declaration).

The like on a Latitat.

Herefordshire, ff. William Richardson complains of John Robinson, being in the Custody of the Sheriff of the County of Hereford, by virtue of a Writ of our Lord the King, called a Latitat (Alias or Pluries, as the Case may be) issued out of the Court of our said Lord the King, before the King himself, at the Suit of the said William against the said John, and returnable in the same Court on, &c. For that whereas, &c.

The like on a special Capias.

Middlesex, ff. William Richardson complains of John Robinson being in the Custody of the Sheriff of the County of Middlesex, by virtue of a Writ of our Lord the King, called a Capias ad respondendum, issued out of the Court of our said Lord the King, before the King himself, at the Suit of the said William against the said John, and returnable in the same Court on, &c. For that whereas, &c.

Affidavit of the Delivery of Declaration.
In the King's Bench.

Between { William Richardson, Plaintiff,
and
John Robinson, Defendant.
K k Henry

The Practising Attorney :

Henry Thomas of Ludlow, in the County of Hereford, Gentleman, maketh Oath that he, this Deponant did deliver a true Copy of the Declaration hereunto annexed to John Dale, the Turnkey of the County Goal of the said County of Hereford, situate at Hereford aforesaid, on the 21st Day of January instant. And this Deponant saith that the said John Dale did at the Time of such Delivery acknowledge to this Deponant that the said Defendant, John Robinson, was then a Prisoner in the said Goal, at the Suit of the said Plaintiff.

Sworn, &c.

Henry Thomas.

Proceedings against Prisoners in Custody of the Marshal.

If the Defendant be in Custody of the Marshal, you ingross and file your Bill, deliver a Copy on Treble-penny to the Turnkey, give a Rule to Plead, demand a Plea, and proceed as in other Cases.

Detainer against Prisoners in Custody of the Marshal.

For preventing the Detainer of Prisoners charged by Declarations in the Custody of the Marshal of the Marshalsea of this Court, where the Cause of Action against such Prisoners does not amount to 10l. It is ordered, that from and after the last Day of this Term, no Declaration, whereby any Prisoner shall be charged in the Custody of the Marshal shall be sufficient Cause of detaining such Prisoner in Custody unless an Affidavit that the Plaintiff's cause of Action against such Prisoner does amount to 10l. or upwards, shall be first made and filed with the Clerk of the Rules of this Court, and the Sum specified in such Affidavit shall be indorsed by him upon such Declaration before the leaving thereof with the Turnkey. E. 15. G. 2.

How

How to discharge Defendant for want of Declaration.

If any Defendant shall be committed to the Custody of the Marshal of this Court, or shall be charged in Custody of the Marshal, or arrested or committed by Virtue of any Process of this Court, to the Custody of any Sheriff or other Officer whatsoever, at the Suit of any Plaintiff, and shall so remain in Custody by two Terms, and the Plaintiff shall not declare against such Defendant within that Time, such Defendant after the End of the second Term after such Imprisonment, shall be discharged out of the Prison where he shall be so detained, upon filing common Bail, signed by one of the Justices of this Court, without any Notice to be given to the Plaintiff, or his Attorney, Jac. II. Geo. I. The Term in which the Writ whereon the Defendant was arrested is returnable, although not returnable until the last Day of the Term, is to be accounted as one of the two Terms, as is also the Term wherein the Defendant was committed to the Custody of the Marshal, although not committed 'till the last Day of a Vacation.

To discharge a Prisoner on this Rule, you must obtain a Certificate from the Clerk of the Declarations, that no Bill is filed in his Office against the Defendant, and a Certificate of the Causes where-with he stands charged from the Clerk of the Papers of the King's Bench Prison, if in Custody of the Marshal, and from the Gaoler or Keeper of the Prison, if in Custody of the Sheriff or other Officer, and then proceed as hereafter directed.

If a Plaintiff shall declare against a Defendant remaining Prisoner as aforesaid, in the Custody of the Marshal of this Court, or any Sheriff, or other Officer, and shall not proceed to Trial, or obtain

The Practising Attorney:

Judgment within three Terms next after the delivering such Declaration, (the Term in which Declaration shall be delivered being one) such Defendant shall be discharged out of Custody filing common Bail, Notice being first given to Plaintiff or his Attorney, and an Affidavit taken made if the Plaintiff or his Attorney does not appear and shew Cause against the Discharge. Trin. 2.

If a Defendant surrenders himself after Judgment, in discharge of his Bail, the Plaintiff shall charge him in Execution, in two Terms following (the Term in which he surrenders being one) he shall be discharged upon common Bail, as if he were in Custody for want of Bail upon an Action, unless Proceedings be stayed by Writ of Error, or other legal objection.

To discharge a Prisoner in any of the above Cases, his Attorney must take out a Judge's Summons, to shew Cause why the Defendant should not be discharged for want of declaring Proceedings at Judgment, charging him in Execution, or as aforesaid. If the Case may be in due Time, which is the Notice directed to be given in the above Rules; and if the Plaintiff's Attorney do not attend thereon, or if sent to an Order being made, the Defendant's Attorney must make an Affidavit of the Service of the Summons and his Attendance at the Time so appointed, whereupon the Judge will make an Order for the Defendant's Discharge, on common Bail.

If the Prisoner be in the Custody of the Marshal, he must get a Certificate from the Clerk of the common Bails, that common Bail was filed for him by order of one of the Judges, which Order (being annexed to the Bail Piece) on which the Marshal will discharge him without a Superfedeas.

But if the Prisoner be in Custody of a Sheriff, or other Officer, he must sue out a Writ of Superfedeas, for signing which, the Bail Piece signed by one of the Judges is a Warrant to the Officer with whom you leave it, and he delivers it over to the Clerk of the common Bails to be filed.

If a Man be attainted, or in Custody on any criminal Prosecution, he is liable to civil Suits, but by the Rules of the Court, he ought not to be charged without Leave of the Court, or of a Judge, at his Chambers, the Person of a Man under an Attainder, is not absolutely at the disposal of the Crown, it is so for the Ends of public Justice, and for no other Purpose; the King may order Execution to be done upon him according to Law, notwithstanding he may be charged in Custody at the Suit of Creditors, but 'till Execution is done, his Creditors have an Interest in his Person for securing their Debts. Foster's Crown Law, 61, 62, 63.

If any Defendant being in Custody of the Marshal of this Court upon Mesne Process, shall be taken and detained in the Custody of any Sheriff, on an Escape Warrant, for escaping out of the Marshal's Custody, the Plaintiff in such Action shall declare against the Defendant in Custody of such Sheriff, before the End of the second Term after his being so taken, otherwise the Defendant may be discharged by Superfedeas. Trin. 6. Annæ.

Notice of Trial, or Writ of Inquiry to a Turnkey, is good against a Prisoner. Ster. 248.

Superfedeas on putting in good Bail.

George the Third, &c. To the Sheriffs of London, greeting. Whereas John Robinson is detained in our Prison, under your Custody, as it is

But

The Praetising Attorney:

is said, by Virtue of our Writ returnable before us at Westminster, on Wednesday next after eight Days of St. Hilary last past, to answer to William Richardson, in a Plea of Trespass, and also to a Bill of the said William against the said John, for 100*l.* upon Promises according to the Custom of our Court before us; and because it sufficiently appears to our Court before us, that the said John hath appeared in our said Court, and found sufficient Bail to answer the said William in the Plea and Bill aforesaid, therefore we command you, that if the said John is detained in our said Prison, under your Custody, by occasion of the said Action, and no other, then you permit him to go at large, as you will answer the contrary at your Peril. Witness, &c,

Lee.

Superfedeas to a Steward of a Liberty.

George the Third, &c. To ——— chief Steward of the Liberty of Bury St. Edmund's, in the County of Suffolk, greeting. Whereas by our Writ we commanded our Sheriff of Suffolk, that he should take John Robinson, if he might be found in his Bailiwick, and keep him safely, so that he might have his Body before us at Westminster, at a certain Day in the said Writ specified, to answer to William Richardson, in a Plea of Trespass, and also to a Bill of the said William against the said John for 100*l.* upon Promises according to the Custom of our Court before us; and you by virtue of a certain Warrant upon our said Writ by the Sheriff of the County aforesaid thereupon directed to you, took the said John within the said Liberty, and still detain him in our Prison, under your Custody, yet because the said John after the taking aforesaid, found sufficient Bail in our Court before us at Westminster, to answer the said William in the Plea and Bill aforesaid, we therefore command you,

you, that if the said John by the Occasion afore said, and no other, is detained in our Prison; under your Custody, then without delay you cause the said John to be discharged out of the same Prison, and permit him to go at large, as you will answer the contrary at your Peril. Witness, &c.

Lec.

Supersedeas on filing common Bail.

George the Third, &c. To the Sheriff of Yorkshire, greeting. Whereas John Robinson is detained in our Prison, under your Custody, as it is said, by virtue of our Writ of Latitat, issued out of our Court before us at Westminster, returnable in the same Court, on Monday next after eight Days of St. Hilary last past, to answer to William Richardson, in a Plea of Trespass, and also to a Bill of the said William against the said John for 100*l.* upon Promises according to the Custom of our Court before us, whereby the Sum of 50*l.* Bail was directed to be taken; but because it sufficiently appears to our said Court before us, that the said John hath appeared in our said Court before us, and put in common Bail by C. D. his Attorney, to answer the said William in the Plea and Bill afore said, we command you, that if the said John be detained in our Prison, under your Custody, by virtue of the said Writ, and for no other Cause, that then you suffer him to go at large, as you will answer the contrary at your Peril. Witness, &c.

Lec.

Supersedeas for want of Declaration in two Causes.

George the Third, &c. To the Sheriff of Herefordshire, greeting. Whereas John Robinson is detained in our Prison, under your Custody, as it is said, by virtue of our Writ of Latitat, returnable

in

The Practising Attorney:

in our Court before us at Westminster, on Wednesday next after the Morrow of All Souls last past; to answer to William Richardson in a Plea of Trespass, and also to a Bill of the said William against the said John for 100*l.* upon Promises according to the Custom of our Court before us, whereupon Bail for 50*l.* was directed to be taken. And whereas the said John is also detained in our said Prison, under your Custody, as it is also said, by virtue of another Writ of Latitat, returnable in our Court before us at Westminster, on Wednesday next after the Morrow of All Souls, to answer to Thomas Jones in a Plea of Trespass, and also to a Bill of the said Thomas against the said John for 80*l.* upon Promises according to the Custom of our Court before us, whereupon Bail for 40*l.* was directed to be taken; but because it sufficiently appeareth to our said Court before us, that the said John hath appeared in our said Court before us, and put in common Bail, by C. D. his Attorney, to answer as well the said William as the said Thomas in the several Pleas and Bills aforesaid, and that the said William and Thomas have not, nor hath either of them proceeded to declare against the said John in due Time, after his Commitment, pursuant to the Rules of our said Court before us, therefore we command you, that if the said John be detained in our Prison, under your Custody for the Causes aforesaid, and no other, that then you suffer him to go at large, as you will answer the contrary at your Peril. Witness, &c.

Lcc.

Supersedeas for want of Prosecution.

George the Third, &c. To the Sheriff of the City of Canterbury, greeting. Whereas by our Writ we commanded our late Sheriff of the City of Canterbury, that he should take John Robinson, if he should be found in his Bailiwick, and him safely

safely keep, so that he might have his Body before us at Westminster, on Wednesday next after eight Days of St. Hilary last past, to answer to William Richardson, in a Plea of Trespass, and also to a Bill of the said William against the said John for 50*l.* of Debt, according to the Custom of our Court, before us to be exhibited. And the said John by virtue of the said Writ was taken, and is now detained in our Prison, under your Custody, yet because the said John hath in no Manner hitherto proceeded in the said Plea and Bill against the said John, and the said John hath by C. B. his Attorney, appeared and filed common Bail in our Court before us, and is ready to answer the said William in the Plea and Bill aforesaid, we therefore command you, that if the said John be detained in our Prison, under your Custody for the Cause aforesaid, and no other, that then you suffer him to go at large, as you will answer the contrary at your Peril. Witness, &c.

Lee.

Superseas for want of Prosecution.

George the Third, &c. To the Sheriffs of Middlesex, greeting. Whereas John Robinson is detained in our Prison, under your Custody, by virtue of our Writ of Latitat, returnable before us at Westminster, on Monday next after eight Days of Saint Hilary last past, to answer to William Richardson, in a Plea of Trespass, and also to a Bill of the said William against the said John for 50*l.* of Debt, according to the Custom of our Court before us. And whereas the said John afterwards, that is to say, on the tenth Day of February last past, was charged with a Declaration at the Suit of the said William, in the Plea aforesaid; but because it appeareth to our Court before us, that the said John hath appeared in our said Court before us, and filed common Bail to answer to the said William

The Practising Attorney:

in the Plea and Bill aforesaid, and that the said William hath not proceeded to Judgment against the said John within three Terms after delivery of the said Declaration, as required by the Rules of our said Court, we command you, that if the said John be detained in our Prison, under your Custody, for the Cause aforesaid, and no other, that then you suffer him to go at large, as you will answer the contrary at your Peril. Witness, &c.

Lec.

Superfedeas for want of Plaintiff's proceeding to Judgment.

George the Third, &c. To the Sheriff of Kent, greeting. Whereas John Robinson is detained in our Prison, under your Custody, as it is said, by virtue of our Writ of Latitat, returnable before us at Westminster, on Monday next after the Morrow of All Souls last past, to answer to William Richardson, in a Plea of Trespas, and also to a Bill of the said William against the said John for 20 l. upon Promises according to the Custom of our Court before us. And whereas the said William afterwards, that is to say, on the Day of last past, was charged with a Declaration at the Suit of the said William, in the Plea and Bill aforesaid; but because it appeareth to our Court before us, that the said John hath put in common Bail to answer to the said William in the Plea and Bill aforesaid, and that the said William hath not proceeded to Judgment against the said John within three Terms after delivery of the said Declaration, as required by the Rules of our said Court, we command you, &c. (as before).

Superfedeas

Superfedeas on filing common Bail by Order of a Judge.

George the Third, &c. To the Sheriff of Middlesex, greeting. Whereas it was (if in any other County say, whereas we lately commanded you,) lately commanded you, that you should take John Robinson, if he might be found in your Bailiwick, and keep him safely, so that you might have his Body before us at Westminster, on Wednesday next after eight Days of St. Hilary last past, to answer to William Richardson, in a Plea of Trespass, and also to a Bill of the said William against the said John for 200/. upon Promises according to the Custom of our Court, before us to be exhibited. And because the said John came into our Court before us, and hath put in common Bail at the Suit of the said William, in the Plea and Bill aforesaid, therefore we command you, that you wholly cease from taking, arresting, or imprisoning the said John, or any ways molesting him on that Occasion, and if you have taken the said John, and do detain him in Prison on that Occasion, and no other, that then you cause him to be delivered without Delay from the Prison wherein he is so detained, as you will answer the contrary at your Peril. Witness, &c.

Lee.

If a Prisoner in the Fleet charged with a Declaration in the Common Pleas, remove himself by Habeas Corpus to the Custody of the Marshal, the Plaintiff must proceed to Judgment in the Court of Common Pleas, and then may carry him back by Habeas Corpus *ad Satisfaciendum*, to charge him in Execution, and so if a Prisoner in Custody of the Marshal be charged with a Declaration in this Court, and he removes himself to the Fleet, the Plaintiff must proceed to Judgment in this Court,

and then bring the Defendant back by *Habeas Corpus*, to be charged in Execution in this Court; but if a Person in Custody on Process issuing out of this Court, remove himself to the Fleet before the Plaintiff has declared against him, in such Case the Plaintiff must proceed against him in the Common Pleas, and cannot proceed further in this Court, unless he has a Mind to bring the Defendant back into this Court by *Habeas Corpus ad Respondendum*.
Vide Habeas Corpus.

C. H. A. P. LXVII.

Proceedings by and against Attornies.

ATTORNIES are on Account of their being considered as constantly attending the Court soliciting the Suits of their Clients, possessed of many Privileges, particularly that of not being subject to Arrest on mesne Process, and when Plaintiffs have a peculiar Writ for the Commencement of Actions called an Attachment of Privilege.

Attachment of
Privilege.

George the Third, &c. To the Sheriff of Middlesex, greeting. We command you, that you attach C. D. and E. F. (any Number of Defendants may be put in this Writ) if they may be found in your Bailiwick, and them safely keep, so that you may have their Bodies before us at Westminster, on next after to answer A. B. Gentleman, being one of the Attornies of our Court, before us, according to the Liberties and Privileges of such Attornies and other Ministers of the same Court, from Time whereof the Memory of Man is not to the contrary, used and approved in the same Court, of a Plea of Trespass, (here

(here insert an Ac etiam, if the Action be Bailable)
and have there then this Writ. Witness, &c.

Pay nothing signing this Writ, sealing, 7d.

If the Writ be not Bailable, add a Notice as to
a Latitat.

Hilary Term, 18 George III.

Middlesex, to wit. A. B. Gent. one of the
Attornies of the Court of our Lord the King, be-
fore the King himself, complains of C. D. being in
the Custody of the Marshal, &c. (as in other De-
clarations.)

Declaration at
the Suit of an
Attorney.

The subsequent Proceedings at the Suit of an
Attorney are the same as in other Cases.

If an Attorney of the Common Pleas be in actual
Custody of the Marshal of this Court, by Process,
he cannot plead his Privilege in any Action on any
Bill filed against him.

If any Attorney of the Common Pleas be brought
into this Court at the Suit of an Attorney of B. R.
which is an Estoppel to the Defendant's Privilege,
even in such Case, the Defendant shall be ousted
of his Privilege in all other Actions commenced
against him in B. R. in the same Term, because
the Jurisdiction of this Court was attached upon
him in the first Action.

An Attorney cannot have his Privilege but where
he sues, and is sued singly and in his own Right,
or on his own Account, and not where he sues, or
is sued jointly, or in *Auter Droit*, as Executor, &c.

An Attorney being Defendant, is not to be ar-
rested, but you proceed by filing a Bill against him,
(which

The Practising Attorney:

(which is merely a Copy of the Declaration, ingrossed on a Piece of Parchment, stamped with a treble Penny Stamp) with the Clerk of the Declarations, in the King's Bench Office, and then make a Copy thereof on treble Penny Paper, which you deliver the Defendant with Notice thereon to plead; give Rule to plead, and proceed as in other Cases.

Hilary Term, 18 George III.

Bill against an
Attorney.

Middlesex, ff. A. B. complains of C. D. Gent. one of the Attornies of the Court of our Lord the King, before the King himself, present here in Court in his proper Person, for that whereas, &c. (the rest as in other Declarations)

If an Attorney of the Common Pleas be sued in this Court, he may either allow his Writ of Privilege, or file Bail, and plead his Privilege to that or any other Action, on a Declaration filed against him in the same Term by the Bye, and vice versa.

If he waive his Privilege by pleading in chief to the first Action, it is a Waiver in all other Actions against him of that Term.

Writ of Privi-
lege for an At-
torney of B. R.
arrested in the
Palace Court.

George the Third, &c. To our Judges of our Court of our Palace of Westminster, and to every of them, greeting. Whereas according to the Custom of our Court, before us at Westminster, hitherto used and approved of in the same Court, the Attornies and other Officers of our said Court before us, whilst they are prosecuting and defending Suits and Actions therein for their Clients, ought not, nor have they from Time immemorial been used to be compelled to answer before us, or any of our Justices or Officers, or any other secular Judges whatsoever, upon any Pleas, Plaints, or Demands, which do not particularly belong to us, (Pleas of Freehold,

Freehold, Felonies, and Appeals excepted) save only before us by Bill exhibited in our said Court before us, and not by Writ. And whereas we have lately received Information by the Complaint of A. B. Gent. one of the Attornies of our Court before us, prosecuting, following, and defending divers Suits and Actions in our said Court, before us for his Clients, that several ill disposed Persons minded to disquiet the said A. B. have issued forth and prosecuted out of our Court of our Palace of Westminster, one or more Writ or Writs, returnable before you in the same Court, and also one or more Precept or Precepts returnable in our said Court before you, or one of you, against the said A. B. and threaten to arrest and detain him in your Custody, by one or more of the said Writ or Writs, Precept or Precepts, (in Suits which do not relate to us, or in Pleas of Freehold, Felony, or Appeals, excepted) whereby the said A. B. is unable to attend his said Office as an Attorney, upon the said several Suits and Actions depending in our said Court before us, which if it is permitted, will manifestly take away, and be in derogation and diminution of the Liberties and Privileges of the said A. B. and to the great Detriment of the said A. B. and his Clients, and because we are willing that the Jurisdiction, Privileges, and Customs of so long Time used and approved of in our said Court before us, should be inviolably kept, we command you, that you desist from taking the said A. B. into your Custody upon any Writ or Writs, Precept or Precepts, and if the said A. B. be detained in your Custody by any Writ or Writs, Precept or Precepts, other than such as particularly concerns us, (Pleas of Freehold, Felonies, and Appeals excepted,) that then you discharge the said A. B. out of your Custody, and suffer him to go at large, as you will answer the contrary at your Peril, and that you inform the Party or Parties, Plaintiff or Plaintiffs, in the Plaint or Plaints, that he, she or they, may prosecute

The Practising Attorney :

prosecute his, her or their Action or Actions, Suit or Suits, before us, by Bill to be exhibited to us in our said Court before us at Westminster, against the said A. B. if he, she or they, think it expedient so to do. Witness, &c.

Lee.

Indorse this Writ A. B. (the Attorney) in Person.

You get a Certificate from the Master's Clerk that the Defendant is an Attorney of this Court, which is Mr. Heberden's Authority for signing the same, to whom you pay nothing, sealing 7d. and then get it allowed by the Court or Sheriff wherever it is directed, who will thereupon make out a Superedeas for the Defendant.

Plea of Privilege by an Attorney of the King's Bench, in Abatement to an Action brought against him in the Common Pleas.

A. B. }
ats. }
C. D. }

And the said A. B. in his proper Person comes and defends the Wrong and Injury above laid to his Charge, and saith, that long before the Day of suing forth of the original Writ of the said C. D. he was, and continually afterwards hath been, and now is an Attorney of the Court of our Lord the King, before the King himself at Westminster, as by his said Majesty's Writ of Privilege to this Plea annexed * under the Seal of the said Court of our Lord the King, before the King himself appears, and that he is prosecuting and defending divers Suits, Pleas, and Affairs of divers liege People and Subjects of our Lord the King, in the same Court, as their Attorney. And the said A. B. saith, that he and all other Attornies of the same Court of our Lord the King, before the King himself, by a laudable and ancient Custom, and according

* Where you plead Privilege in another Court than where the Privilege arises, you must plead it *Sub pede Sigilli*, as in this Precedent.

cording to the Laws of this Kingdom, and the Liberties and Privileges of the said Court of our Lord the King, before the King himself, Time out of Mind, used and approved of, ought not to be drawn or compelled to answer before any Justices or other Officers of our said Sovereign Lord the King, or other Judges whatsoever, in any Court, except in the Court of our Lord the King, before the King himself, at Westminster, on any Pleas, or Complaints, (Pleas relating to Freehold, Felonies, and Appeals only excepted) and this he is ready to verify, wherefore he prays Judgment whether he ought to be compelled to answer the said Declaration of the said C. D. in the said Action, &c.

Attornies are in Case of Misbehaviour, or Malpractice, subject to the Animadversion and Censure of the Court, in which they are admitted by a summary Application, by Way of Motion thereto, and will be struck off the Rolls, imprisoned, or otherwise punished at the Discretion of the Court, and the Process sued out to bring them into Court on this Occasion, is called an Attachment, and being issued at the Suit of the King, for Contempt of the Court, is made out by the Clerks in the Crown Office.

C H A P. LXVIII.

Ejectment.

THIS is an Action by a Tenant for a Term of Years, who is ousted of his Possession, to recover back his Term and Damages, but under some Regulations; it is now become the most usual Action for trying Titles to Lands or Tenements, and supplies the Place of many real Actions. To this End it is first necessary, that the Claimant do take Possession of the Lands, and make a formal Entry thereon, (as by Law he may) to empower him to constitute a Lessee for Years that may be capable of receiving the Injury of Dispossession,

M m

(see

The Praising Attorney :

(for it would be an Offence, called in our Law, *Maintenance*, to convey a Title to another, when the Granter is not in Possession of the Land) and being so in Possession of the Soil, he there upon the Land seals and delivers a Lease for Years, to some third Person or Lessee, and having thus given him Entry, leaves him in Possession of the Premises. This Lessee is to stay upon the Land 'till the prior Tenant, or he who had the previous Possession, enters thereon afresh, and ousts him, or 'till some other Person (either by Accident, or by Agreement before-hand) comes upon the Land and turns him out or ejects him ; for this Injury the Lessee is intitled to his Action of Ejectment against the Tenant, or this *casual Ejector*, which ever it was that ousted him, to recover back his Term and Damages, but where this Action is brought against such a casual Ejector as is before-mentioned, and not against the very Tenant in Possession, the Court will not suffer the Tenant to loose his Possession without any Opportunity to defend it, wherefore it is a standing Rule, that no Plaintiff shall proceed in Ejectment to recover Lands against a casual Ejector, without Notice given to the Tenant in Possession, (if any there be) and making him a Defendant if he pleases. And in order to maintain the Action, the Plaintiff must in Case of any Defence, make out four Points before the Court, viz. Title, Lease, Entry, and Ouster, first he must shew a good Title in his Lessor, which brings the Matter of Right intirely before the Court, then that the Lessor being seized or possessed by virtue of such Title, did make him the Lease for the present Term, thirdly, that he the Lessee, did enter or take Possession in Consequence of such Lease ; and then lastly, that the Defendant ousted or ejected him, whereupon he shall have Judgment to recover his Term and Damages, and shall in Consequence have a Writ of Possession, which the Sheriff is to execute by delivering him the undisturbed and peaceable Possession of his Term.

This

This is the regular Method of bringing an Action of Ejectment, in which the Title of the Lessor comes collaterally and incidently before the Court, in order to shew the Injury done to the Lessee by this Ouster. This Method must be still continued in due Form and Strictness, save only as to the Notice to the Tenant, whenever the Possession is vacant, or there is no actual Occupant of the Premises, and also in some other Cases. But as much Trouble and Formality were found to attend the actual making of the Lease, Entry, and Ouster, a new and more easy Method of trying Titles by Writ of Ejectment, where there is any actual Tenant or Occupier of the Premises in Dispute, was invented somewhat more than a Century ago, by the Lord Chief Justice Rolle, who then sat in the Court of upper Bench, so called during the Exile of King Charles II. This new Method entirely depends on a String of legal Fictions, no actual Lease is made; no actual Entry by the Plaintiff, no actual Ouster by the Defendant, but all are merely ideal, for the sole Purpose of trying the Title. To this End in the Proceedings a Lease for a Term of Years is stated to have been made by him who claims Title to the Plaintiff, who brings the Action as by John Rogers to Richard Smith, which Plaintiff ought to be some real Person, and not merely an ideal fictitious one, who has no Existence, as is frequently, though unwarrantably practised; it is also stated that Smith the Lessee entered, and that the Defendant William Stiles, who is called the casual Ejector, ousted him, for which Ouster he brings this Action. As soon as this Action is brought, and the Complaint fully stated in the Declaration, Stiles the casual Ejector or Defendant, sends a written Notice to the Tenant in Possession of the Lands, as George Saunders informing him of the Action brought by Richard Smith, and transmitting him a Copy of the Declaration withal, assuring him that he Stiles, the Defendant, has no Title at all to the Premises, and

The Practising Attorney:

shall make no Defence, and therefore advising the Tenant to appear in Court and defend his own Title, otherwise he, the casual Ejector, will suffer Judgment to be had against him, and thereby the actual Tenant Saunders, will inevitably be turned out of Possession. On receiving of this friendly Caution, if the Tenant in Possession does not within a limited Time apply to the Court to be admitted a Defendant in the stead of Stiles, he is supposed to have no Right at all, and upon Judgment being had against Stiles the casual Ejector, Saunders the real Tenant will be turned out of Possession by the Sheriff.

But if the Tenant in Possession applies to be made a Defendant, it is allowed him upon this Condition, that he enter into a Rule of Court to confess at the Trial of the Cause three of the four Requisites for the Maintenance of the Plaintiff's Action, viz. the *Lease* of Rogers the Lessor, the *Entry* of Smith the Plaintiff, and his *Ouster* by Saunders himself now made the Defendant instead of Stiles, which Requisites as they are wholly fictitious, should the Defendant put the Plaintiff to prove, he must of Course be nonsuited for want of Evidence, but by such stipulated Confession of *Lease*, *Entry*, and *Ouster*, the Trial will now stand upon the Merits of the *Title* only. This done, the Declaration is altered, by inserting the Name of George Saunders instead of William Stiles, and the Cause goes down to Trial under the Name of Smith, (the Plaintiff) on the Demise of Rogers, (the Lessor) against Saunders the now Defendant, and therein the Lessor of the Plaintiff is bound to make out a clear Title, otherwise his fictitious Lessee cannot obtain Judgment to have Possession of the Land for the Term supposed to be granted. But if the Lessor makes out his Title in a satisfactory Manner, then Judgment and a Writ of Possession shall go for Richard Smith the nominal Plaintiff, who by this Trial has proved the Right of John Rogers, his supposed

supposed Lessor, yet to prevent fraudulent Recoveries of the Possession by collusion with the Tenant of the Land, all Tenants are obliged by Stat. 11 Geo. II. c. 19. on Pain of forfeiting three Years Rent to give Notice to their Landlords when served with any Declaration in Ejectment, and any Landlord may by Leave of the Court, be made a Co-defendant to the Action, which indeed he had a Right to demand long before this Statute. But if the new Defendant fails to appear at the Trial, and to confess Lease, Entry, and Ouster, the Plaintiff Smith, must indeed be there nonsuited for want of proving those Requisites, but Judgment will in the End be entered against the casual Ejector Stiles, for the Condition on which Saunders was admitted a Defendant is broken, and therefore the Plaintiff is put again in the same Situation as if he never had appeared at all, the Consequence of which we have seen would have been, that Judgment would have been entered for the Plaintiff, and the Sheriff by virtue of a Writ for that Purpose, would have turned out Saunders, and delivered Possession to Smith, the same Process therefore as would have been had, provided no conditional Rule had been ever made, must now be pursued as soon as the Condition is broken; but Execution shall be stayed if any Landlord after the Default of his Tenant, applies to be made a Defendant, and enters into the usual Rule to confess Lease, Entry, and Ouster.

The Damages recovered in these Actions, though formerly their only Intent, are now usually (since the Title has been considered as the principal Question) very small and inadequate, amounting commonly to one Shilling, or some other trivial Sum. In order therefore to complete the Remedy, when the Possession has been long detained from him that has a Right, an Action of Trespass also lies after a Recovery in Ejectment, to recover the mesne Profits which the Tenant in Possession has wrongfully

fully received, which Action may be brought either in the Name of the nominal Plaintiff in the Ejectment, or his Lessor against the Tenant in Possession, whether he be made Party to the Ejectment, or suffers Judgment to go by Default. Black. Com. Vol. III.

Trinity Term, 17 George III.

Declaration in
Ejectment.

Middlesex, ss. Richard Smith, complains of William Stiles, being in the Custody of the Marshal of the Marshalsea of our Lord the King, before the King himself, for that to wit. That whereas John Rogers, on the first Day of July, in the seventeenth Year of the Reign of our Sovereign Lord George the Third, now King of Great Britain, &c. at Westminster, in the County of Middlesex, had demised, granted, and to Farm let to the said Richard Smith, four Messuages, (recite the Parcels) with the Appurtenances, situate, lying, and being in the Parish of St. George's Hanover Square, in the County aforesaid, (the Parish wherein the Premises lie) to have and to hold the said Tenements with the Appurtenances to the said Richard and his Assigns, from the first Day of June then last past, unto the full End and Term of seven Years from thence next ensuing, and fully to be complete and ended, by virtue of which said Demise the said Richard entered into the said Tenements with the Appurtenances, and was possessed thereof until the said William afterwards to wit, on the said first Day of July, in the Year aforesaid, with Force and Arms, &c. entered on the Tenements aforesaid, with the Appurtenances, in and upon the Possession of the said Richard, and ejected, drove out, and amoved the said Richard from his said Farm, his said Term therein being not yet expired, and him the said Richard so ejected, driven out, and amoved, hath kept out, and doth yet keep out from his Possession thereof, and other Injuries

to him then and there did against the Peace of our said Lord the now King, and to the Damage of him the said John of 10*l*. and therefore he brings Suit, &c.

A. B. Atty. for the Plt.	} Pleges to prosecute	{ John Doe, and Rich. Roe.
— Atty. for the Deft.		

Notice written under the Declaration to the Tenant in Possession.

Mr. George Saunders,

I am informed, that you are in Possession, or claim Title to the Premises in this Declaration of Ejectment mentioned, or to some Part thereof, and I being sued in this Action as a casual Ejector, and having no Claim or Title to the same Premises, do advise you to appear on the first Day of next Michaelmas Term, in his Majesty's Court of King's Bench, at Westminster, by some Attorney of that Court, and then and there by Rule of the same Court, to cause yourself to be made Defendant in my stead, otherwise I shall suffer Judgment to be entered against me, and you will be turned out of Possession.

Your Friend,
Richard Smith.

July 2, 1777.

If the Premises lie in London or Middlesex, make the Notice to the Tenant at the Foot of the Declaration, to appear the first Day of the next Term, for if made generally to appear of the next Term, he has the whole Term to appear in, but if the Premises lie in any other County than London or Middlesex, make the Notice to appear the next Term generally.

Thus

The Praefising Attorney:

Thus having properly drawn or filled up your Declaration (for Blank Declaration may be had of any Law Stationer) and Notice, make as many Copies thereof on treble Penny Stamps, as there are Tenants in Possession, and serve each Declaration personally on the Tenant or his Wife, before the Essoign Day of the Term wherein he is to appear, and at the same Time read over the Notice, or fully explain the Nature of it to him.

A Copy of the Declaration and Notice left for the Tenant with his Son, Daughter, or Servant, he being Abroad, or out of the Way, is not a good Delivery, unless it evidently appear to the Court, that such Declaration and Notice came to his Hands before the Essoign Day of the Term, and that on receipt thereof, he very well understood the Contents and meaning thereof, in which Case it has been held a good Delivery, but if the Tenant purposely keep out of the Way to avoid being served, the Court will on a proper Application, grant Relief, according to the Nature of the Case.

The Tenant being served with this Declaration, you make another Copy thereof on Stamps, to annex to the following Affidavit of Service, in order to move for a Rule for Judgment of the next Term.

In the King's Bench.

Between { Richard Smith on the Demise of
John Rogers, Plaintiff, and
William Stiles, Defendant,

J. B. of, &c. maketh Oath, that he this Defendant did, on the second Day of July last, deliver a true Copy of the Declaration and Notice hereunto annexed, to George Saunders, Tenant, in Possession of the Premises in the said Declaration mentioned, and at the same Time told him, that it was a De-

a Declaration in Ejectment, and that unless he did appear by some Attorney of the Court of King's Bench, the first Day of this present Michaelmas Term, there would be a Judgment thereupon against the Defendant, by Default, and he would be turned out of Possession, or Words to that Effect.

Sworn, &c.

J. B.

This Affidavit must be positive that the Tenant is Tenant in Possession for Information, or Belief will not do in this Case.

The above Affidavit and Copy of the Declaration you give to Council, with Instructions to move for Judgment against the casual Ejector, in case of the Tenants Non-appearance, which are delivered over to the Clerk of the Rules when the Motion is made to be filed by him, with whom you draw up your Rule if the Tenant fails to appear.

If the Premises lie in London or Middlesex, and the Notice be to appear the first Day of the Term, move for this Rule the Beginning of the Term, and then the Tenant has four Days inclusive next after the Motion to appear in, but if you move late in the Term, the Court will allow him only one or two Days, and sometimes order the Tenant to appear immediately, that the Plaintiff may be able to give Notice of Trial within Term. But if you do not move before the last four Days of the Term, the Tenant has until two Days before the Efloign Day of the subsequent Term to appear. If the Notice be to appear generally, then he hath the whole Term to appear. If the Tenements lie in any other County than London or Middlesex, though the Declaration be delivered before the Efloign Day of Easter or Michaelmas Terms, yet the Tenant has 'till four Days before the next issuable Term, i. e. Hilary or Trinity, to appear, and if in Cumberland,

N n

or

The Practising Attorney:

or any other County where the Assizes are but once a Year, the Tenant has 'till four Days next after the End of the Term preceding the Assizes to appear. If Term ends on Wednesday, the Tenant has 'till the following Monday to appear. You must move for Judgment the same Term the Tenant has Notice to appear, or Court will not grant a Rule, and in Country Ejectments you may move any Time within the Term, though it is often deferred 'till the latter End. The following is the Rule drawn up on this Occasion.

Rule for Judgment against the casual Ejector.

Thursday next after the Morrow of All Souls, in the 18th Year of King George III.

Smith on the Demise of Rogers, Stiles, } Unless the Tenant in Possession of the Premises in Question shall appear and plead to Issue on Monday next after the Morrow of All Souls, let Judgment be entered for the Plaintiff against the now Defendant Stiles, by Default, upon the Motion of Mr. ———.

Let the Rule be entered.

By the Court.

By Rule Trin. 18 c. 11. 1666, it is ordered, that every Attorney of this Court shall enter with the Clerk of the Rules, a general Rule to plead in every Action of Trespass and Ejectment, before any Motion shall be made in Court for Judgment against the casual Ejector.

As the Tenant in Possession of the Premises cannot be compelled to appear and enter into the common Rule to become Defendant instead of the casual Ejector, so neither can the Landlord alone, and without joining with the Tenant, enter into such

such Rule, and be made sole Defendant, whereby great Inconveniencies having happened through the Obstinacy of Tenants, it is therefore provided by Statute 11 G. 2. c. 19. that if the Tenant shall refuse to appear, Judgment shall be signed against the casual Ejector for want thereof; but if the Landlord of any Part of the Land, &c. shall desire to appear by himself, and consent to enter into the like Rule that the Tenant in case he had appeared ought to have done, then the Court shall permit such Landlord so to do, and order a stay of Execution upon such Judgment against the casual Ejector, until they shall further order therein.

The Application to the Court for this Purpose is grounded on the following Affidavit, and a Copy of the Rule when got from the Clerk of the Rules, you annex to the Plea and consent Rule left at the Judge's Chambers.

Affidavit of the Tenant's refusing to defend an Ejectment, in order to have the Landlord admitted Defendant.

In the King's Bench.

Between { Richard Smith, on the Demise of
John Rogers, Plaintiff, and
William Stiles, Defendant.

John Thomas, of, &c. maketh Oath, that he this Defendant, did on the 23d Day of July last by the Direction of Timothy Jones, Landlord of the Premises in Question in this Cause, apply to George Saunders, Tenant in Possession of the same Premises, to know whether he the said George Saunders, would appear and become Defendant in this Cause, or would permit the said Timothy Jones to defend his Title to the said Premises in the Name of the said George Saunders, and this Deponent at

Ch: Practising Attorney :

the same Time shewed and offered to deliver to the said George Saunders a Note, signed by the said Timothy Jones, whereby the said J. Jones promised to defend and keep the said George Saunders harmless, of, from, and against all Costs and Charges in this Cause, and the said George Saunders told this Deponent, that he would not appear and become Defendant in this Cause, or any Ways concern himself therein.

Sworn, &c.

J. Thomas.

How to appear in Ejectment.

Get a Blank consent Rule of a Stationer, unstamped, fill it up according to the following Precedent, making the Tenant or Landlord Defendant, instead of the nominal Defendant, intitling the Cause in the Margin, and adding the Premises as described in the Declaration, or such Part thereof as you mean to defend, then sign the Defendant's Attorney or Agent's Name, at the Foot of the Rule, leaving a blank Space above, for the Plaintiff's Attorney to do the like, (for this is rather an Agreement entered into by the Parties, than the Rule itself) then Ingross your Plea, the general Issue, on treble Penny Stamp, and annex the same to the Rule, and if a Rule be got to admit the Landlord Defendant, annex a Copy of that also, and so leave them at one of the Judges Chambers, having first filed common Bail; or if the Proceedings are by Original, enter an Appearance with the Philazer. If the Proceedings are by Original, strike out the Words *and file common Bail*, and instead of his *Bill*, insert his *Writ*, in the consent Rule.

Consent

Consent Rule.

Michaelmas Term, in the seventeenth Year of the
Reign of King George III.

It is ordered by Con-
sent of the Attornies of
both Parties, that George
Saunders be made De-
fendant in the stead of
the now Defendant Wil-
liam Stiles, and do ap-
pear forthwith at the Suit
of the Plaintiff, and file
common Bail, (if by Ori-
ginal, leave these Words

out) and receive a Declaration in an Action of
Trespas and Ejectment, for the Premises in
Question in this Cause, and forthwith plead thereto
not Guilty, and upon the Trial of the Issue, con-
fess Lease, Entry, and Ouster, and insist upon the
Title only, otherwise let Judgment be entered for
the Plaintiff against the now Defendant William
Stiles, by Default, and if upon the Trial of the
Issue, the said George Saunders shall not confess
Lease, Entry, and Ouster, whereby the Plaintiff
shall not be able further to prosecute his *Bill* (if by
Original, say *his Writ*) against the said George
Saunders, then no Costs shall be allowed for not
further prosecuting the same; but the said George
Saunders shall pay Costs to the Plaintiff in that
Case, to be taxed. And it is further ordered, that
if upon the Trial of the said Issue a Verdict should
be given for the said George Saunders, or it shall
happen that the said Plaintiff shall not further pro-
secute his said *Bill* (if by Original, say *his Writ*)
for any other Cause than for not confessing Lease,
Entry, and Ouster, then the Lessor of the Plaintiff
shall

The Practising Attorney :

shall pay to the said George Saunders his Costs in that Behalf to be adjudged.

By the Court.

A. B. for the Lessor of the Plaintiff,
C. D. for the Defendant.

If the Defendant enters into the common Rule to Confess, &c. for a Part of the Premises only, his Attorney must forthwith give Notice to the Plaintiff's Attorney of the Premises he means to defend.

King's Bench.

Smith on the Demise of Rogers
against
Saunders.

S I R,

Take Notice that I defend Title for a Messuage or Tenement and Garden, situate in the Parish of St. Giles in the Fields, in the County of Middlesex, now in the Possession of the said George Saunders or his under Tenants. Dated, &c.

Your's, &c.

A. B. Defendant's Attor.

To Mr. C. D. Plaintiff's Attorney.

How to draw up Consent Rule.

When your Rule for Judgment is out, search at the four Judges Chambers of this Court for the Plea and Rule which (the Judge having signed the Consent Rule, and you given a Receipt for the same) you also sign your Name over that of the Defendant's Attorney at the Foot of the Rule, and then carry it to the Clerk of the Rules, who files it and

and will draw you up another Consent Rule on Stamp, for which pay 6s. This Rule make a Copy of and annex to the Issue when delivered to the Defendant's Attorney.

Issue.

Having got your Play and Rule draw your Issue, intitling it of the same Term as the Plea. Copy your Consent Rule and annex the same thereto. Indorse Notice of Trial and deliver the same to the Defendant's Attorney, charging Copy, Issue and Declaration each 4d. per Sheet—entering Plea 1s. and Half Consent Rule 3s. and thus deliver it to the Defendant's Attorney, who must pay for the same or Judgment may be signed.

How to sign Judgment against the casual Ejector for want of a Plea.

Search all the Judges Books for the Plea and Rule; if none filed, make an Incipitur of your Entry on a double half Crown Stamp, and on a Roll draw up your Rule for Judgment (if not before done) and carry them to the Clerk of the Judgments, who on producing your Rule, will sign the Judgment; pay him 3s. 6d. and then sue out your Writ or Possession, as hereafter directed.

Record, &c.

The Record, and every other Proceeding subsequent hereto to the Trial, is the same as in other Cases.

How to Proceed against the Defendant if he does not confess Lease, Entry and Ouster.

If at the Trial the Defendant does not appear and confess Lease, Entry, and Ouster, the Course is to call

The Practising Attorney:

call the Defendant and his Attorney, if he be within the Rule, and then to call the Plaintiff himself and Nonsuit him, and then upon the return of the Postea Judgment will be given against the casual Ejector, and the Master will tax Costs upon the Rule to confess Lease, Entry, and Ouster; and if these be demanded of the Defendant and not paid, the Court upon Affidavit will grant an Attachment.

And where there are several Defendants, and at the Trial some of them will not appear and confess Lease, Entry, and Ouster, and they who do appear, will also not confess Lease, Entry, and Ouster; for those who do not appear, the Plaintiff shall not be nonsuited, but they shall be found not guilty, and the Plaintiff shall proceed to Trial against those who appear and may enter up Judgment against the casual Ejector and have Execution thereon against the Lands of those that did not appear, notwithstanding they were found not guilty upon the Trial.

But where the Defendant's not confessing Lease, Entry, and Ouster, is with respect to some Variance, and the Defendant on that Account, makes no Defence, Judgment shall not be entered against the casual Ejector, neither shall the Plaintiff have any Cost, and yet this Case is not provided for in the Consent Rule.

Where a Verdict shall be given for the Defendant or the Plaintiff shall be nonsuited for any other Cause than for the Defendant's not confessing Lease, Entry, and Ouster, the Defendant must proceed to tax his Costs on the Postea as in other Actions, and sue out a Capias Satisfaciendum against the Plaintiff; and if upon shewing the said Writ under Seal to the Lessor of the Plaintiff, and serving him with a Copy of the Rule by consent to confess Lease, Entry, and Ouster, the Lessor of the Plaintiff

tiff does not pay the Costs the Court will grant an Attachment against him.

Where there is a Recovery in Ejectment by Verdict, an Action may be brought to recover the mesne Profits; and at the Trial it is not necessary to prove any Entry of the Defendant, because the Defendant doth in the Rule confess Lease, Entry, and Ouster, and also an Entry by the Plaintiff upon the Defendant is found by the Verdict against him. And this Action may be brought either by the Plaintiff in the Action or by the Lessor of the Plaintiff; and where the Plaintiff brings it, he need only at the Trial to produce the Postea of his Recovery: But where the Lessor brings it, he must prove his Title over again, if it be insisted on by the other Side, or else he will be nonsuited.

The Plaintiff in Ejectment is a meer nominal Person, and Trustee for the Lessor; and if he releases the Action, or if an Action be brought for the mesne Profits and he releases it, he may be committed for a Contempt.

Where Judgment is obtained against the casual Ejector and a Trial is not lost, the Court will on Payment of Costs, and entering into the common Rule for confessing Lease, Entry and Ouster, set aside such Judgment, as in other Actions, and not put the Tenant to the Charge and Hazard of recovering back his Possession by another Action.

Where the Lessor of the Plaintiff is an Infant, the Declaration ought to set forth a Lease by Deed, and also rendering some Rent, though it be but 5s. otherwise the Lease will be void; whereas this Lease so declared upon, and which must be confessed by the Defendant in the Consent Rule, is not void but voidable; and although this is really but a fictitious Lease and only to try the Title, yet it must

The Practising Attorney :

must be a good Lease in Law, for if not so, no Action will lie upon it.

If an Ejectment be brought on the Demise of an Infant, the Court will stay the Proceedings till a sufficient Plaintiff be named, or some Person undertake on Behalf of the Infant to pay such Costs as shall be adjudged to the Defendant.

Of Proceeding in Ejectment by Original.

The Original Writ is seldom sued out unless a Writ of Error be brought (the first Process in this way of Proceeding, as well as by Bill, being the Declaration against the casual Ejector) but if there should be Occasion for it and the Tenant has not yet appeared, you make a Praecipe in the following Manner; but if an Appearance be entered, then instead of the fictitious Defendant insert the Name of him who appears, with his Addition.

Middlesex to wit. If Richard Smith shall make you secure, &c. then put, &c. William Stiles, late of, &c. that he be before our Lord the King, on _____ wheresoever, &c. to shew wherefore with Force and Arms he entered into four Messuages with the Appurtenances, in the Parish of Saint George, Hanover-Square, in the County of Middlesex, which John Rogers demised to him for a Term, which is not yet expired, and ejected, &c. and other Enormities, &c. against the Peace, &c. and to the Damage, &c.

22d July, 1777.

A. B.

This Praecipe carry to the Curfitor of the County, who will thereupon make out your Original, which

Dr. New King's Bench Guide.

291

which you take to the Sheriff to be returned, and then file it in the Treasury Chamber.

Declaration.

But though this Action is supposed to be grounded on the Original Writ, yet your first Process is the Declaration and Notice, the same as in Actions by Bill, except only the Difference in the Beginning thereof, and that the Pledges are omitted at the Bottom.

Declaration in Ejectment by Original. Trin. Term, 17th George III.

Middlesex, ff. William Stiles, late of the Parish of St. Giles in the Fields, in the County of Middlesex, Gent. was attached to answer Richard Smith in a Plea; wherefore, he the said William, entered into four Messuages with the Appurtenances situated, lying and being, in the Parish of St. George's, Hanover Square, in the County aforesaid, which one John Rogers demised to the said Richard for a Term which is not yet expired, and ejected him from his said Farm, and did other Wrongs to him, to the great Damage of the said Richard, and against the Peace of our Sovereign Lord the King. And whereupon the said Richard by A. B. his Attorney complains, That whereas, &c. as in a Declaration by Bill, omitting the Pledges and adding the Notice to the Tenant.

Appearance, Plea, Rule, &c.

Enter your Appearance with the Philazer, for whom make Note thus:

Middlesex. Appearance for George Saunders, late of the Parish of St. George's, Hanover Square, in
O o 2 the

The Practising Attorney :

the County of Middlesex, Gent. at the Suit of
Richard Smith, Lessee of John Rogers.

July 22, 1777.

C. D.

The Consent Rule is the same as in Actions by Bill, except that you strike out the Words, *And file common Bail*, and instead of his *Bill* insert his *Writ* throughout (vide Consent Rule); then carry it to the Philazer, who will mark it, and after that annexing the Plea thereto, leave it with one of the Judges Clerks.

The subsequent Proceedings are the same as in common Actions by Original.

How to proceed for Recovery of Premises untenanted.

Where the Premises are untenanted the Proceedings are in the old Way by sealing a Lease on the Premises, and on the Motion for Judgment, there must be an Affidavit of the sealing the Lease and the Purport thereof, and also in what Manner the Defendant got the Possession given to and taken from the Lessee (who is always made Plaintiff) and how the Declaration was delivered to the Defendant, that the Court may judge of the regularity of the Proceedings.

Where half a Year's Rent shall be in Arrear, the Landlord having a Right to Re-enter for Non-payment, may serve a Declaration in Ejectment without a formal Demand or Re-entry, or affix such Declaration on the Door of any demised Messuage or notorious Part of the Land which shall be deemed a legal Service, and on Proof that half a Year's Rent was due before the Declaration was served, and no sufficient Distress on the Premises countervailing the Arrears of the Rent then due, the Lessor shall Recover, Stat. 4. Geo. II. c. 28.

But

:-But in moving for Judgment in this Case, there must be an Affidavit that there was half a Year's Rent in Arrear before Declaration served, that the Lessor of the Plaintiff had a Right to Re-enter, that no sufficient Distress was to be found on the Premises countervailing the Arrears of Rent then due, and that the Premises were untenanted, or that the Tenant could not be legally served with the Declaration (as the Case may be) and that a Copy of the Declaration was affixed to the most notorious, and what Part of the Premises, or the Court will not grant a Rule for Judgment.

If the Tenant in this Case will before Trial either tender to the Plaintiff, or bring into Court the Rent in Arrear, together with Costs, all further Proceedings shall cease, same Stat.

Landlords being often great Sufferers by Tenants running away in Arrear, and refusing to deliver up Possession, whereby the Landlords have been put to the Expence of recovering Possession by Ejectment, by Stat. 11. Geo. II. c. 19. If any Tenant holding at a Rack Rent, or where Rent reserved shall be three Fourths of the yearly Value who shall be in Arrear for one Year's Rent shall desert the Premises and leave the same, so as no sufficient Distress can be had, two Justices of the Peace (having no Interest in the Premises) at the Request of the Landlord may go and view the same, and affix on the most notorious Part of the Premises, Notice in Writing what Day (at the Distance of fourteen Days at least) they will return to take a second View thereof; and if on such second View the Tenant, or some Person on his Behalf shall not pay the Rent in Arrear, and there shall be no sufficient Distress, the Justices may put the Landlord in Possession and the Lease thereof to such Tenant as to any Demise shall be void.

Writ

The Practising Attorney :

Writ of Possession by Bill.

George the Third, &c. To the Sheriffs of Middlesex, Greeting. Whereas A. B. lately in our Court before us at Westminster by Bill without our Writ, and by the Judgment of the same Court recovered against C. D. his Term yet to come of, and in one Messuage or Tenement, with the Appurtenances situate, lying and being at Westminster, in the County aforesaid, which J. F. on the 10th Day of May in the 17th Year of our Reign demised to the said A. for a Term of Years not yet expired, to wit, from the 24th Day of March then last past, to the full End and Term of five Years from thence next ensuing, and fully to be complete and ended by Virtue of which Demise the said A. entered upon the said Tenements with the Appurtenances, and was thereof possessed until the said C. afterwards, to wit, on the same 10th Day of May, in the 17th Year aforesaid, with Force and Arms entered into the said Tenements, with the Appurtenances; and him the said A. from his Farm aforesaid, the said Term, then and there not being expired, ejected, drove out, and removed, and him the said A. hath with-held from his Possession thereof and still doth with-hold; whereof the said C. is convicted, as appears to us upon Record. Therefore we command you that without Delay you cause the said A. to have his Possession of his Term aforesaid, yet to come of and in the Tenements aforesaid, with the Appurtenances, and in what Manner you shall have executed this our Writ make appear to us at Westminster on (the Return) and have there then this Writ: Witness, &c.

Loc.

Writ

Writ of Possession by Original.

George the Third, &c. To the Sheriffs of Middlesex, greeting. Whereas J. G. lately in our Court, before us at Westminster, by the Judgment of the said Court, recovered his Term yet to come of, and in one Messuage or Tenement, with the Appurtenances situate, lying and being at, &c. (as in the Writ of Possession by Bill only that you make this Writ returnable *ubicunque*, &c. and leave out the Word *then* before the Teste.

C H A P. LXIX.

Of Writs of Error.

A Writ of Error lies from all inferior Courts of Record in England, from the Court of Common Pleas at Westminster, and from the King's Bench in Ireland into this Court to correct Errors upon Matter of Law, arising upon the Face of the respective legal Proceedings, so that no Evidence is required to substantiate or support it, and after Judgment it is again removeable to the House of Lords.

Error from the King's Bench in Debt Detinue, Covenant, Account, Case, Ejectment and Trespass originally commenced therein by *Bill* (except where the King is party) lies to the Court of Exchequer Chamber, before the Judges of the Common Pleas, and Barons of the Exchequer, and from thence to the House of Lords; but where the Proceedings

The Practising Attorney :

ceedings in the King's Bench do not first commence therein *by Bill*, but by Original Writ out of Chancery, Error then lies without any intermediate Stage of Appeal directly to the House of Lords, the dernier resort for the ultimate Decision of every Civil Action. Each Court of Appeal may in their respective Stages upon hearing the Matter of Law in which the Error is assigned reverse or affirm the Judgment of the inferior Court; but none of them are final save only the House of Peers.

A Writ of Error *de Recordo quod coram vobis residet* also lies in the Court of King's Bench upon a Judgment given in the same Court for Error in Matter of Fact, as if to an Action against an Idiot or an Infant (who in the Eye of the Law are considered as incompetent to make Choice of a fit Person as Attorney to conduct their Defence, and should therefore appear by Guardian or in Person) appear and plead by Attorney, and the Record is thus erroneously carried down for Trial and Judgment had thereupon. The Defendant may by his Guardian sue forth this Writ, and shall assign his Non-age or Idiocy for Error, and upon Issue thereon joined, a Jury shall try the Fact of such Assignment, and the Judgment be affirmed or reversed according to their Return thereof; and though the Court herein reverse its own Judgment, yet as that Reversal solely depends on a Matter which before was not in Issue, and shall now be tried by a Jury, the Judges are therefore unexceptionable, and indeed the most fit Persons to determine this Writ of Error.

C H A P.

C H A P. LXX.

How to sue forth and prosecute a Writ of Error from an inferior Court.

MAKE a Præcipe or Note of Instructions for the Curfitor according to the Nature of the Case in the following Manner :

Palace Court (the Court in which Judgment is given) Writ of Error for Thomas Jones at the Suit of Edward Williams upon a Judgment in Case, Debt, or whatever else it be.

C. D.

Get your Writ of Error allowed by the Prothonotary of the Court, who will if Execution be sued out and not executed, give you a Superfedeas to the same, but if no Execution be issued, the Allowance of the Writ is a sufficient Superfedeas, and no Execution can afterwards be sued out, nor need the Defendant put in Bail thereon; no Stat. requiring Bail on Writs of Error from inferior Courts.

On the return of the Writ of Error, the Defendant in Error may give the Plaintiff a Rule to transcribe; which Rule issues out of the inferior Court; and after Service thereof, he must bespeak the Transcript and carry the same in and file it with Mr. Heberden before the second Seal or the Defendant may, upon a Certificate that the Writ of Error is not returned, and Transcript brought in, have a Writ of *Executio Judicii*, which is obtained in the same Manner as the Writ of Error from the Curfitor, directed to the Court in which Judgment is given, and commanding that

P p

notwithstanding

The Practising Attorney:

notwithstanding the Writ of Error they proceed to Execution upon the said Judgment.

The Transcript being carried in each Party, must bespeak a Copy of Mr. Heberden, for which he charges 4d. per Sheet, and the Defendant in Error may then sue out a *Scire Facias*, *quare Executionem non*, and Alias, if the first be returned *Nihil*, directed to the Sheriff of the County where the Cause of Action is stated to arise.

*Scire Facias
quare Execu-
tionem non.*

George, &c. To the Sheriff of Surry, greeting.
Whereas Edward Williams, lately in our Court of our Palace of Westminster, before the Judges of the same Court without our Writ, and by the Judgment of the same Court recovered against Thomas Jones 10l. for his Damages which he sustained as well by occasion of the not performing certain Promises and Undertakings made by the said Thomas to the said Edward at Southwark in your County, and within the Jurisdiction of the same Court; as for his Costs and Charges expended by him about his Suit in that Behalf whereof the said Thomas is convicted, as by inspecting the Record and Process thereof in our Court before us at Westminster, now remaining, and which for certain Causes we lately caused to be brought in our same Court before us, appears to us. And now on Behalf of the said Edward, in our Court before us, we have been informed that, although Judgment be thereof given, yet Execution of the said Damages still remains to be made to the said Edward; whereupon the said Edward hath brought us, that a proper Remedy may be provided for him in this Behalf. And we being willing that what is just should be done in this Behalf, do command you that by good and lawful Men of your Bailiwick you make known to the said Thomas that he be before us on the Morrow of All-Souls, wheresoever we shall then be in England,
to

to shew if any Thing he has or knows to say for himself why the said Edward ought not to have his Execution against him of the Damages aforesaid, according to the Force, Form and Effect of the said Recovery, if it shall seem expedient to him, and further to do and receive what our same Court before us shall consider of him in this Behalf, and have there the Names of those by whom you shall make known to him, and this Writ: Witness, &c.

If there be occasion to sue out an Alias Sci. Fa. it differs from the above in this only, that you say, "Do command you as before" "we have commanded you, that by Good, " &c." and making the necessary Alteration in the Teste and Return.

Where the Proceedings in the inferior Court are by Original Writ, the Scire Facias and all other Writs must be returnable of a general Return *ubicumque*, &c. and have fifteen Days between the Teste and Return, where by Bill at a Day certain, and there need only be fifteen Days between the Teste and Return of both Writs; but in either Case they should be lodged in the Sheriff's Office at least four Days before the Return.

Upon the return of Scire Feci to the first Writ, or of two Nihils, the Defendant in Error must enter a Rule with the Clerk of the Rules (which is given in the same Manner as a Rule to plead) for the Plaintiff to appear, which Rule expires in four Days, and if he neglect to appear, the Defendant may enter an award of Execution on the Roll, and sue out Execution for the amount of the Judgment in the Court below, but is not intitled to Costs on the Writ of Error; nor is the Plaintiff thereby precluded from still prosecuting his Writ though Execution be taken out and actually executed, but may afterwards assign Errors and pro-

The Practising Attorney :

ceed to argue the same, and if the Judgment be reversed shall have Restitution of all he hath lost by reason of such Execution. The best Way therefore is for the Defendant to proceed to Non Profs the Writ of Error, in order to which after the Rule to appear is out, he must get a Rule from the Master, on the Back of the Transcript for the Plaintiff in Error to assign Errors *de recordo*. Enter this Rule with the Clerk of the Rules, and serve his Attorney with a Copy thereof; and if the Plaintiff in Error do not within four Days assign Errors, the Defendant may sign a Non Profs and shall have his Costs taxed and allowed, according to the Statute.

*Entry of Non Profs in Error from the Palace Court
after two Scire Facias.*

Michaelmas Term, 18th George III.

England, ff. Thomas Jones puts in his Place C. D. his Attorney to prosecute his Writ of Error against Edward Williams in a Plea of Trespass on the Case.

England, ff. The said Edward Williams puts in his Place A. B. his Attorney against the said Thomas Jones on the said Writ of Error in the Plea aforesaid.

England, ff. The Lord the King hath sent to the Judges of his Court of his Palace of Westminster his Writ, closed in these Words, to wit, "George the Third, &c." (Here Copy the Transcript throughout according to the Copy made by Mr. Heberden,) afterwards to wit, on next after the Morrow of All Souls, in this same Term, before our Lord the King at Westminster, comes the said Edward, by his Attorney aforesaid, and

and says, that Execution of the said Judgment still remains to be made to him; therefore, he prays the Writ of our Lord the King, to be directed to the Sheriff of the said County of Surry, to warn the said Thomas to be before our Lord the King, wheresoever, &c. to shew if any Thing he has or knows to say for himself, why the said Edward ought not to have his Execution thereof against him of his Damages, Costs and Charges aforesaid, according to the Force, Form and Effect of the said Recovery; and it is granted to him, &c. By which it is commanded to the Sheriff of the County of Surry, that by good and lawful Men of his Bailiwick he make known to the said Thomas, that he be before our Lord the King, on

Scire Facias
awarded.

wheresoever, &c. to shew in Form aforesaid, if, &c. And further, &c. the same Day is given to the said Edward, &c. At which Day, before our Lord the King at Westminster, the said Edward comes by his Attorney aforesaid, and the Sheriff of the said County of Surry, to wit, H. H. Esq. returns that the said Thomas hath nothing in his Bailiwick by which he can make known to him, nor is he found in the same. Therefore, as before, it is commanded to the Sheriff of Surry, that by good, &c. he make known to the said Thomas, that he be before our Lord the King on

Return Nihil.

Alias Sci. Fa.
awarded.

wheresoever, &c. to shew in Form aforesaid, if, &c. And further, &c. the same Day is given to the said Edward, &c. At which Day, before our said Lord the King at Westminster, the said Edward comes by his Attorney aforesaid. And the Sheriff of the said County of Surry, to wit, the said H. H. Esq. likewise returns, that the said Thomas hath nothing in his Bailiwick by which he can make known to him, nor is he found in the same. And the said Thomas, although on the fourth Day of the Plea solemnly required came not, but made Default; And upon this, the said Edward

Nihil returned.

The Praefising Attorney :

Day appointed
to assign Errors.

Plaintiff in Er-
ror makes De-
fault.

Judgment.

Costs.

Edward saith, that the said Thomas hath not yet assigned Error or Errors in the said Record and Proceedings. Therefore, a Day is given to the said Parties, before our Lord the King, at Westminster until

after (the Day in the Rule given by the Master) to wit, to the said Thomas, to assign Error or Errors in the said Record and Proceedings, &c. At which Day, before our Lord the King at Westminster, the said Edward comes by his Attorney aforesaid : And the said Thomas, at that Day, although solemnly demanded, comes not, but makes Default, nor doth he further prosecute his said Writ of Error against the said Edward. It is therefore considered, that the said Thomas be in Mercy, and that the said Edward have therefore his Execution against the said Thomas of his Damages, Costs and Charges, according to the Force, Form and Effect of the said Recovery, &c. And it is further considered, that the said Edward recover against the said Thomas ten Pounds, adjudged to the said Edward by the Court of our said Lord the King, now here, according to the Form of the Statute, for his Damages, Costs and Charges which he hath sustained by occasion of the delaying the Execution of the said Judgment by Pretence of prosecuting the said Writ of Error, and that the said Edward likewise have thereupon Execution, &c.

If the Plaintiff assign Errors, having drawn his Assignment, he must get it, whether General or Special, signed by Council. Ingross and deliver it over on Treble-penny stamped Paper to the Defendant's Attorney in the Nature of a Plea, thus :

Assignment

Assignment of General Errors.

Michaelmas Term, 18th George III.

Lee.

And the said Thomas by C. D. his Attorney comes and says, that in the Record and Proceedings aforesaid, and also in giving the Judgment aforesaid, there is manifest Error in this, and to wit, that the Declaration aforesaid, and the Matter therein contained, are not sufficient in Law for the said Edward to maintain his said Action against the said Thomas, there is also Error, is this, that by the the Record here sent, it appears that the Judgment aforesaid in the Plea aforesaid in Form aforesaid given, was given for the said Edward, when by the Law of the Land of this Kingdom of England, Judgment in the Plea aforesaid ought to have been given for the said Thomas against the said Edward. And so the said Judgment aforesaid is erroneous, and hereupon the said Thomas also prays that the Judgment for the said Errors and other the Errors in the Record and Proceedings aforesaid, may be reversed, annulled, and held entirely for nothing, and that he may be restored to all Things which he hath lost by occasion of the said Judgment, &c.

{ Jones
att.
Williams.

W. Baldwin.

In Records from inferior Courts, no Diminution can be alledged either by the Plaintiff or Defendant in Error, but the Court may award a *Certiorari ad informandum conscientiam*.

The Plaintiff in Error ought to enter the Transcript on Record, the same Term it is brought into the Office, and if he neglects so to do, the Defendant may,

may, because they are both as it were Plaintiffs, as soon as which is done, and he hath assigned Errors, and entered the same also on Record, he may sue out a *Scire Facias ad audiendum Errores*, and *Alias*, to which if the Defendant does not appear, and join in Error, the Plaintiff must proceed to Argument as hereafter directed, and shall be heard *ex parte*.

*Scire Facias ad
audiendum Er-
rores*

George the Third, &c. To the Sheriff of Surry, greeting. Forasmuch as in the Record and Process, and also in the giving of Judgment in a certain Plaint lately levied in our Court of our Palace of Westminster, before the Judges of the same Court, between Edward Williams, and Thomas Jones, of a Plea of Trespass on the Case, manifest Error as it is said, hath intervened, to the great Damage of the said Thomas, as by his Complaint we are informed, which said Record and Process we have for certain Reasons caused to come in our Court before us, and we being willing if any Error there be, to correct the same, and to do unto the Parties aforesaid full and speedy Justice in this Behalf, do command you, that by good and lawful Men of your Bailiwick, you make known to the said Thomas, that he be before us in

wheresoever we shall then be in England, to hear the Record and Process aforesaid, if it shall seem expedient unto him, and further to do and receive what our said Court before us shall consider of him in this Behalf, and have there the Names of them by whom you shall make known unto the said Edward as aforesaid, and this Writ. Witness, &c.

If the Errors assigned are special, the Defendant in Error must get a Joinder drawn and signed by Council, and ingross and deliver the same over on Stamp, to the Plaintiff's Attorney, but if general, he need only deliver also on treble Penny, the
Joinder

Joinder of *in nullo est erratum* thus, and at the same Time pay the Plaintiff's Attorney 2s. 4d. for entering the same on Record.

Lee.

Michaelmas Term, 18 Geo. III.

There is not any Error.

{ Williams
ats;
Jones.

A. B. Attorney for the Defendant in Error.

The Parties being at Issue in Error, either of them may enter the same on Record, (vide the following Entry) move for Concilium. Enter the Cause for Argument with the Clerk of the Papers, deliver Error Books to the Judges, and proceed thereupon to Judgment in the same Manner as upon a Demurrer (for further Instructions to do which, vide Demurrer.)

If the Plaintiff assign Errors on being served with a Rule for that Purpose in the Entry of Record, pursue the foregoing Precedent to the Entry of that Rule, then follows the Assignment of Errors, and afterwards the Joinder, &c. as follows.

Whereupon the said Edward, by A. B. his Attorney, comes and saith, that neither in the Record and Proceedings aforesaid, nor in the giving of the Judgment aforesaid in any Thing, is there Error, and he prayeth, that the Court of our Lord the King, now here, may proceed to the Examination as well of the said Record and Proceedings aforesaid, as of the Matters aforesaid above assigned for Error, and that the Judgment aforesaid may be in all Things affirmed. But, because the Court of our Lord the King, now here, are not yet advised of giving their Judgment of and upon the Premises, therefore a Day is given to the said Parties to be before our Lord the King, until such time as they shall be so advised, for that the Court of our said Lord the King is not yet advised.

Joinder in nullo
est Erratum.

Continuance
Concilium

Q 9

Judgment affirmed.

advised thereof. At which Day, came here into Court, as well the said Thomas, as the said Edward, by their Attornies aforesaid, upon which the Premises being considered as well as the Record and Proceedings aforesaid, and the Judgment aforesaid on the same given, the Causes before for Error assigned being by the Court of our Lord the King here, diligently examined and fully understood, it seemeth unto the Court of our said Lord the King here, that the Judgment aforesaid is not in any wise vitious or defective, and that in the said Record there is not any Thing erroneous. Therefore it is considered by the said Court of our Lord the King, before the King himself now here, that the Judgment aforesaid in all Things be affirmed, and do stand in its full Strength and Effect, (the said Causes above for Error alledged in any Thing notwithstanding.) And it is farther considered, that the said Edward do recover against the said Thomas 100 l. by the Court of our said Lord the King now here, adjudged to the said Edward, at his Request, for his Costs and Charges which he hath expended by reason of the Delay of the Execution of the said Judgment, and by the Prosecution of the said Writ of Error.

Costs.

Ca. Sa. on Judgment affirmed in Error.

George the Third, &c. To the Sheriff of Surry, greeting. We command you, that you take Thomas Jones, if he shall be found in your Bailiwick, and him safely keep, so that you may have his Body before us in _____ wheresoever we shall then be in England, to satisfy Edward Williams, as well 50 l. 10 s. which the said Edward lately recovered against the said Thomas in our Court of our Palace of Westminster, for his Damages which he sustained, as well by Occasion of the not performing certain Promises and Undertakings lately made by the said Thomas to the said Edward, as for his Costs and Charges by him about his Suit in that Behalf expended,

expended, whereof the said Thomas is convicted, as by inspecting the Record and Proceedings thereupon, which we have lately caused to come in our Court before us, by virtue of our certain Writ for correcting Errors appears, and which said Judgment is in all Things affirmed; as also 18^l. which were adjudged to the said Edward in our said Court before us, according to the Form of the Statute in such Case made and provided for his Damages which he sustained by Reason of the delaying of Execution of the said Judgment under pretext of prosecuting the said Writ for correcting Error lately prosecuted by the said Thomas, of and upon the Premises, as is premised, whereof the said Thomas is likewise convicted, as also appears to us of Record, and have you there this Writ. Witness, &c.

The several foregoing Precedents though not applicable to every Case, will be sufficient to give a thorough Insight into the Proceedings in Error, at present but too little known, and be a Clew whereby the Practiser may direct himself, on referring to proper Books of Entries.

C H A P. LXXI.

How to prosecute a Writ of Error from the Common Pleas to the King's Bench.

HAVING got your Writ of Error from the Cursitor, as before directed, you get it allowed by the Clerk of the Errors, Mr. Hough, and serve the other Party's Attorney with a Copy thereof, for 'till such Service it is no Superfedeas of Execution,

The Practising Attorney :

cution, and in four Days after Service thereof, in the following Cases, there must also be Bail put in thereon, and Notice thereof given, or Execution may issue, notwithstanding the Writ of Error, which Bail undertake if Judgment shall be given against the Plaintiff in Error, that he shall pay the Debt, Damages, and Costs thereupon, or they will do it for him, and cannot discharge themselves by a Render of the Principal.

By Statute 3 Jac. I. c. 8. Execution shall not be stayed upon any Writ of Error for reversing any Judgment in any Action or Bill of Debt upon any single Bond for Debt, or upon any Obligation with Condition *for the Payment of Money only*, or upon any Action or Bill of Debt for Rent, or upon any Contract, unless the Person suing such Writ of Error shall with two sufficient Sureties, such as the Court shall allow of, be bound by Recognizance in double the Sum recovered, to prosecute the Writ of Error with Effect, and pay (if Judgment be affirmed) all Debts, Damages, and Costs adjudged on the former Judgment, and all Costs and Damages to be awarded for delaying Execution.

By Statute 13 Car. II. Stat. 2. c. 2. §. 9. no Execution shall be stayed by Writ of Error *after Verdict* and Judgment thereon, in any Action of Debt upon 2 E. 6. for not setting out of Tythes, Action of Case upon promise for Payment of Money, Action *sur trover*, Covenant, Detinue, and Trespass, unless such Recognizance, as by Stat. 3 Jac. I. be first acknowledged.

And by Stat. 16 and 17 Car. II. c. 8. §. 3. no Execution shall be stayed by Writ of Error *after Verdict* and Judgment in any personal Action, unless such Recognizance be first acknowledged, nor upon any Judgment *after Verdict* in Dower, or *ejectione firmæ*, unless the Plaintiff in Error shall become

become bound, &c. But Writs of Errors brought by Executors and Administrators, popular Actions, Actions on Penal Statutes (except on 2 E. 6.) Indictments, Presentments, and Appeals, are excepted.

On Error in Ejectment, the Plaintiff in Error being in a remote Part of the Kingdom, found two sufficient Persons to be Bail, and the Court held that the Intent of the Statute which was to secure the Defendant in Error, was thereby fully answered, because the Bail is better than the Principal's own Recognizance. Pasch. 2 W. and M. Barnes, v. Bowler Curth. 121. Plaintiff in Error in Ejectment, shall be bound in double the Year's Rent of the Premises in Question, and may be examined if he is worth so much.

Bail being put in, and Notice thereof given, the Defendant may any Time within twenty Days afterwards give a Rule for better Bail, after Service of which Rule, they shall justify in four Days, but if no Rule given within that Time, they shall be allowed.

On the Return of the Writ of Error, the Defendant may take out and serve the Plaintiff with a Rule to transcribe, who must thereupon give Instructions to the Clerk of the Errors to make up the Transcript, which he will do by the Times following. If the Writ of Error be returnable the first Return of any Term, he takes the whole Term to transcribe, and does not bring in the Transcript till the last Day of that Term, and if returnable on any other Return, he takes the whole Vacation to transcribe, and brings in the Transcript on the first Day of the following Term.

The Transcript being carried in and filed with Mr. Heberden, the Parties take Copies thereof, and the

The Practising Attorney :

the Defendant may sue out his *Scire Facias, quare Executionem non*, and thereon proceed, according to the Directions given in the last Chapter; which Writ, if the Transcript be brought in before the Essoign Day of any Term, may bear Teste the last Day of the preceeding Term, and if brought in within the Term, the first Day of the Term.

If the Plaintiff in Error assign for Error, that there is no Original, or Warrant of Attorney, or alledge diminution, that Part of the Record remains in the inferior Court not certified, and prays a Certiorari. The Defendant may immediately get a Rule from the Master (by whom all Rules in Error in the King's Bench, after the Transcript is brought in, and before Arguments are given) to return the Certiorari, and serve the Plaintiff's Attorney with a Copy thereof, and if it be not thereupon returned and filed in the Office within four Days after Service of the Rule, the Defendant may join in *nulla est erratum*, and enter on Record a *non misit Breve*, and proceed to Argument as in Cases of Demurrer, (Vide Directions in the preceding Chapter.)

Certiorari to the
Chief Justice of
C. B. to certify
Warrants of
Attorney.

George the Third, &c. To our trusty and well-beloved Sir William de Grey, Knt. our Chief Justice of the Bench, greeting. We being willing for certain Causes to be certified whether Edward Williams hath made A. B. his Attorney against Thomas Jones, of a Plea of Debt, and whether the said Thomas Jones hath made C. D. his Attorney at the Suit of the said Edward Williams, in the same Plea before you of Record or not, command you, that you search the Rolls and other Memorandums of Middlesex, in the Terms of St. Michael and Hilary, in the eighteenth Year of our Reign, being in your Custody of Record, and that what you shall thereupon find in the same between the said Parties in the Plea aforesaid, you certify

to

to us without delay, wheresoever we shall then be in England, together with this Writ. Witnesses, &c.

Lee.

C H A P. LXXII.

Error in the Exchequer Chamber.

A Writ of Error to the Court of Exchequer Chamber, upon a Judgment given in the King's Bench, is prosecuted in nearly the same Manner as those of which we have before given an Account, except that all Rules until the making up and delivering over the Transcript are given by Mr. Way, Clerk of the Errors of this Court, and afterwards by Mr. Cicil, Clerk of the Errors of the Exchequer Chamber, and that instead of the Plaintiffs suing out a Writ of *Scire Facias ad audiendum Errores*, he must give ten Days Notice to the Clerk of the Errors of the Day of Argument, and that the Plaintiff in Error must deliver Books to the Judges of the Common Pleas, and the Defendant to the Barons of the Exchequer, four Days before the Day of Argument.

On Judgment in Error in the Exchequer Chamber, a Remittitur of the Record to the King's Bench is entered, and the Execution thereupon issues out of this Court.

C H A P. LXXIII.

*Error tam in redditione Judicii quam in
adjudicatione Executionis.*

THIS is a Writ of Error peculiarly adapted for the Relief of Bail, after Scire Facias and Award of Execution against them, but if the Principal had before brought a Writ of Error in the Exchequer Chamber, and the Judgment was thereupon affirmed, it does not lie the Court having already examined that Judgment.

C H A P. LXXIV.

Error quod Coram nobis Residen.

THIS Writ is allowed in Court by the Secondary, and because none of the Statutes which oblige the Plaintiff in Error to put in Bail, extend to this Writ of Error, it is said to be no *Superfedeas*, but by Leave of the Court. *Carth.* 367.

But a modern Reporter in a Case of Belt against Collins, *Trin. 9 Geo. I.* seems to say, that a Writ of Error *Coram nobis Residen'* may be allowed by the Secondary, in Vacation, and that it is a good *Superfedeas* from the Allowance, even without Notice.

The Writ of Error being allowed, you draw up a Rule thereon, with the Clerk of the Rules, and serve the adverse Attorney with a Copy thereof, as in other Cases.

To

To compel the Plaintiff to assign Errors, the Defendant must move the Court for a Rule, after Service of which, he must immediately assign Errors, and either Party may then carry down the Record for Trial, and if found for the Plaintiff, he must move to put the Cause in the Paper for Argument, and upon producing the Postea, the Court will give Judgment of Reversal.

When after Errors assigned, the Writ is discontinued, Plaintiff may have another Writ *quod coram vobis residet*, and upon that may assign other Errors, either within or without the Record, and is not bound to the same Errors assigned upon the first Writ. Also this must be entered upon the same Roll with the first, that the Court may see all together. *Yates, v. Wildham Cro. Eliz. 155, 281.* Writ once good, but abates by Plea or Death, inferior Court cannot proceed, but the superior Court and Party may have a new Writ, *quod coram vobis residet*, but where the Writ is ill, as to remove a Record of Judgment, *quod fuit in curia nostra*, where it was in the Time of a Predecessor *aliter*, *Dun. v. Dean Latch. 198. N. B. 71.*

Error *coram vobis*, lies not after Affirmance, nor in the Exchequer Chamber.

CHAP. LXXV.

Error from Ireland.

THE Transcript on this Writ is brought in and filed with Mr. Heberden, who makes Copies thereof for both Parties.

R

H

The Drafting Attorney :

If the Plaintiff does not bring in the Transcript in due Time, on a Certificate thereof from Mr. Heberden, the Defendant may sue forth an *Executio Judicii*, directed to the Chief Justice of Ireland.

To compel the Plaintiff to assign Errors, the Defendant must move for a Rule for that Purpose, and he will thereby be ordered to assign Errors within a Week after Service of the Rule, and if the Plaintiff, his Attorney, or Agent cannot be found, Court will order that sticking up the Rule in the public Office shall be good Service; and the Plaintiff must in like Manner move for a Rule for the Defendant to join in Error, which he must do in four Days after Service, or no *Scire Facias ad audiendum Errores* lies.

On an Assignment of Errors from Ireland, there must be an Affidavit annexed, verifying the same.

If Judgment be affirmed, the Record is transmitted to Ireland, and the Court there awards Execution.

C H A P. LXXVI.

Error in Parliament.

ALL Writs of Error in Parliament, are made returnable immediately, or upon a Prorogation *ad proximum Parliamentum*, and the Proceedings there are very expeditious, there being no *Scire Facias*, but when the Transcript is brought in on a Motion in the House by a Peer, a Day is appointed for the Plaintiff in Error to assign his Errors, and after Issue is joined on *in nullo est erratum*

return upon another Motion, their Lordships appoint a Day for hearing the Errors, at which Day both Parties must attend with their Council, but neither must have more than two to plead for him.

By several Orders of Parliament for the more speedy prosecuting of Writs of Error, it is directed, That the Plaintiffs in all Writs of Error after the Records be brought in, shall speedily repair to the Clerk of the Parliament, and prosecute the same, and satisfy the Officers their Fees justly due, and shall assign Errors within eight Days after the bringing in of such Writs and Records, and if he make default so to do, then the said Clerk at the Defendant's Request, shall record a Non-pross, and the Record be remitted. And if any Plaintiff alledge Diminution, and pray a Certiorari, the Clerk shall enter an Award thereof accordingly, and the Plaintiff may before *in nullo est erratum* pleaded, sue forth the Certiorari in ordinary Course, without special Petition or Motion for the same, and if he shall not prosecute such Writ, and procure it to be returned in ten Days next after his Plea of Diminution, unless he shew good Cause to enlarge the Return thereof, he shall lose the Benefit of the same, and the Defendant may proceed as if no such Writ of Certiorari were awarded.

That no Person presume to deliver printed Cases, unless signed by one or more of the Council who attended the hearing of the Cause in the Courts below, or shall be of Council at the Hearing in this House.

That when a Day shall be appointed for the hearing of any Cause, Appeal, or Writ of Error, the same shall not be altered, but upon Petition, and that no such Petition shall be received unless two Days Notice be previously given to the adverse

The Practising Attorney :

Party, whereof Oath shall be made at the Bar of the House.

That when Diminution shall be alledged, and a Certiorari prayed and awarded, the Clerk of the Parliament shall upon Request give a Certificate thereof.

That at the Hearing of Causes one of the Council for the Appellants shall open the Cause, then the Evidence on their Side shall be read, which done, the other Council for the Appellants may make Observations on the Evidence. Then one of the Council for the Respondents shall be heard, and the Evidence on their Side read, after which the other Council for the Respondents shall be heard, and one Council only for the Appellants to reply.

If on a Judgment in the Common Pleas, a Writ of Error be brought in the King's Bench, and Bail put in thereon, and Judgment affirmed, and afterwards a Writ of Error be brought in Parliament, the Party must give a new Recognizance, for the first does not include Costs to be assessed in the House of Lords.



F I N I S.